43-431
143-431

See ante

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 151. ~~16~~ 7

JOHN L. SULLIVAN, JOHN RYAN, PHILLIP HARRINGTON, TIMOTHY CARROLL, RICHARD FOLEY, K. C. FISHER, M. J. STEWART, TIMOTHY SANTRY, C. J. O'LAUGHLIN, AND P. J. McNULTY, PLAINTIFFS IN ERROR,

vs.

THE IRON SILVER MINING COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 11, 1886.

Defendant in error respectfully submits that, upon the record, the judgment should be affirmed, and it prays for such a decision.

Respectfully submitted,

THOMAS M. PATTERSON,

Attorney for Defendant in Error.

143-431

143-431

See ante

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 151. ~~16~~ 7

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No. 151.

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vs.

THE IRON SILVER MINING COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 5th day of March, A. D. 1883, came the Iron Silver Mining Company, by G. G. Symes, Esq., its attorney, and filed in said court its complaint, and sued out of said court a writ of summons against J. L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty.

And the said complaint is in words and figures as follows, to wit:

Complaint.

In the Circuit Court of the United States for the District of Colorado, in the Eighth Circuit.

THE IRON SILVER MINING COMPANY, a Corporation,
vs.
J. L. SULLIVAN, JOHN RYAN, PHILLIP HARRINGTON, TIMOTHY Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty.

WELLS & MOYER PLACER
vs.
KIT CARSON LODE.

The Iron Silver Mining Company, which is a corporation organized and created under the laws of the State of New York and a citizen of the said State of New York, the plaintiff in this action,
2 complains of J. L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty, who are all citizens of the State of Colorado and defendants in this action, and for cause of action alleges—

I. That on the 1st day of January, A. D. 1883, the said plaintiff company was and still is the owner of and seized and possessed of that certain tract of land and mining claim situated in California mining district, county of Lake, and State of Colorado, and known and called the Wells and Moyer placer claim, consisting of one hundred and ninety-three acres and forty-three hundredths of an acre of land, more or less, and particularly described by metes and bounds as follows, with magnetic variations at 15 degrees east, to wit: Beginning at corner No. 1, a prophyry rock 5 x 6 x 9 inches in size, marked "1–281," from which U. S. locating monument No. 1 bears north seventy-three (73) degrees one (1) minute and thirty-six (36) seconds west at the distance of ten thousand 8 hundred and seventy and sixty-three hundredths ($10,870\frac{63}{100}$) feet, and the peak of Bald Mountain bears south sixty-five degrees thirty-five (35) minutes east; thence from said corner No. 1 south seventy-nine (79) degrees twenty-

eight (28) minutes east five hundred and ninety and five-tenths (590 & $\frac{9}{10}$) feet to corner No. 2, a porphyry rock 5 x 7 x 12 inches in size, marked "2–281;" thence south fifty-eight (58) degrees eight minutes east four hundred and thirty-six (436) feet to road, seven hundred and twenty-one (721) feet to corner No. 3, a granite rock 5 x 7 x 13 inches in size, marked "3–281;" thence south twenty-five (25) degrees four minutes west sixty-eight feet to corner No. 4, a granite rock 7 x 8 x 8 inches in size, marked "4–281;" thence south sixty-six (66) degrees eight (8) minutes east seven hundred and thirty-eight (738) feet
3 to corner No. 5, a granite rock seven by eleven by thirteen inches in size, marked "5–281;" thence south twenty-nine (29) degrees forty-eight (48) minutes west twenty (20) feet to the north bank of California gulch, fifty-six (56) feet to stream, ninety (90) feet to south bank of California gulch, one hundred and thirty-three (133) feet to corner No. 6, a quartz rock 8 x 11 x 12 inches in size, marked "6–281;" thence north seventy-two (72) degrees fifty (50) minutes west two hundred and fifty (250) feet to corner No. 7, a quartz rock 6 x 8 x 12 inches in size, marked "7–281;" thence south twenty (20) degrees forty-eight (48) minutes west two hundred and forty (240) feet to north bank of Eureka gulch, five hundred and fifty (550) feet to south bank of said gulch, eight hundred and forty-five (845) feet to corner No. 8, a porphyry rock 7 x 9 x 12 inches in size, marked "8–281;" thence south seventy-two (72) degrees eight (8) minutes west two hundred feet to corner No. 9, a porphyry rock 5 x 7 x 10 inches in size, marked "9–281;" thence south four hundred (400) feet to corner No. 10, a quartz rock 5 x 6 x 10 inches in size, marked "10–281," from which a blazed pine tree thirteen (13) inches in diameter bears north thirty-two (32) degrees ten (10) minutes east at the distance of eight and three-tenths (8 & $\frac{3}{10}$) feet and a pine fourteen (14) inches in diameter, blazed and marked "10–281," bears south seventy-one (71) degrees thirty-eight (38) minutes east at the distance of ten (10) feet; thence from said corner No. 10 south thirty-nine degrees fifty-six (56) minutes west seven hundred and fifty feet to corner No. 11, a quartz rock 4 x 811 inches in size, marked "11–281," from which a pine tree sixteen inches in diameter, blazed and marked "11–281," bears north sixty-two (62) degrees twelve (12) minutes east at the distance of twelve (12) feet, and a pine tree nine (9) inches in diameter, blazed and marked
4 "11–281," bears south fifteen degrees and twenty-one (21) minutes east at the distance of ten and eight-tenths (10 & $\frac{8}{10}$) feet; thence from said corner No. 11 west one hundred and twenty-eight and seventy-one hundredths (128 & $\frac{71}{100}$) feet to corner No. 12, a granite rock 5 x 7 x 11 inches in size, marked "12–281," from which a pine tree thirteen (13) inches in diameter, blazed and marked "12–281," bears south five (5) degrees thirteen (13) minutes east at the distance of sixteen and two-tenths (16 & $\frac{2}{10}$) feet, and a pine tree eleven inches in diameter, blazed and marked "12–281," bears south fifty-nine (59) degrees and eight minutes west at the distance of fourteen and *and* eight-tenths (14 & $\frac{8}{10}$) feet; thence from said corner No. 12 south eleven hundred sixty-four and one-tenth (1,100 & $\frac{1}{10}$) feet to corner No. 13, a granite rock 5 x 11 x 14 inches in size, from which

Mount Sheridan bears south seventy-three (73) degrees thirty-six (36) minutes east; monument on Mt. Elbert bears south fifty-four (54) degrees forty-six (46) minutes west; a pine tree nine inches in diameter, blazed and marked "13–281," bears south twenty-four (24) degrees eight (8) minutes west at the distance of ten and five-tenths (10 & $\frac{5}{10}$) feet, and a pine tree five (5) inches in diameter, blazed and marked, bears north seventy-seven (77) degrees forty-seven (47) minutes west at the distance of thirteen (13) feet; thence from said corner No. 13 west thirty-five hundred and ninety-four and sixteen-hundredths (3,594 & $\frac{16}{100}$) ft. to corner No. 14, a granite rock *granite rock* 5 x 10 x 14 inches in size, marked "14–281," from which a pine tree eleven (11) inches in diameter, blazed and marked "14–281," bears north twenty-nine (29) degrees twenty-two (22) minutes east at the distance of eleven and two-tenths (11 & $\frac{2}{10}$) feet, and a blazed pine tree twelve (12) inches in diameter, marked "14–281," bears north seventy-one (71) degrees twenty-five (25) minutes west at the distance of thirty- — (31) feet; thence from
5 said corner No. 14 north twenty-six (26) minutes west eleven hundred and thirty-eight and sixty-nine hundredths (1,138 & $\frac{69}{100}$) feet to corner No. 15, a quartz rock 5 x 7 x 9 inches in size, marked "15–218," from which a blazed pine tree seventeen (17) inches in diameter bears north sixty-five (65) degrees fifteen (15) minutes west at the distance of eleven and one-tenth (11 & $\frac{1}{10}$) ft.; a double pine tree, blazed and marked "15–281," bears south nineteen (19) degrees ten (10) minutes east at the distance of ten (10) feet; thence from said corner No. 15 east five hundred and ninety (590) feet to corner No. sixteen (16), a porphyry rock 7 x 8 x 11 inches in size, marked "16–281," the same being corner No. 3 of survey No. 236; thence north sixty-five (65) degrees fifteen (15) minutes east along the southerly boundary of said survey No. 236 five hundred and twenty-seven (527) feet to corner No. 17, a porphyry rock 5 x 12 x 12 inches in size, marked "17–281," the same being corner No. 1 of survey No. 259; thence south fifty (50) degrees east four hundred and seventy-two and forty-seven hundredths (472 & $\frac{47}{100}$) feet to corner No. 18, a granite rock 3 x 8 x 14 inches in size, marked "18–281," the same being corner No. 2 of said survey No. 259; thence north sixty-five (65) degrees east five hundred and thirty-one and twenty-nine hundredths (531 & $\frac{29}{100}$) feet to corner No. 19, a granite rock 5 x 5 x 15 inches in size, marked "19–281;" thence south one hundred and ninety (190) feet along the west boundary of the Oro La Plata lode to corner No. 20, a granite rock 6 x 6 x 18 inches in size, marked "20–281," from which a blazed pine tree seven (7) inches in diameter bears north nineteen (19) degrees thirty (30) minutes east at the distance of five and five-tenths (5 & $\frac{5}{10}$) feet, and a blazed pine tree twelve (12) inches in diameter bears south eighty (80) degrees thirty (30) minutes west at the distance of nineteen (19) feet; thence from said corner No. 20 along the south
6 boundary of said Oro La Plata lode three hundred (300) feet to corner No. 21, a granite rock 6 x 7 x 10 inches in size, marked "21–281," from which a blazed pine tree fourteen (14) inches in diameter bears north seventy-two (72) degrees six (6) minutes

east at the distance of twenty-one (21) and one-tenth feet, and a blazed pine six inches in diameter bears north thirty-five (35) degrees thirty-three (33) minutes east at the distance of twelve and eight-tenths feet; thence from said corner No. 21 north along the east boundary of Oro La Plata lode three hundred and twenty-nine and eighty-nine hundredths (329 & $\frac{89}{100}$) feet to corner No. 22, a quartz rock 6 x 6 x 9 inches in size, marked "22–281;" thence north sixty-five (65) degrees east one hundred and fifty-two and seven-tenths (152 & $\frac{7}{10}$) feet to corner No. 23, a lime rock marked "23–281," the same being No. 3 of said survey No. 259, from which a blazed pine tree fourteen inches in diameter bears south seventy-two (72) degrees four (4) minutes east at the distance of eleven and eight-tenths (11 & $\frac{8}{10}$) feet, and a blazed pine tree ten (10) inches in diameter bears north sixteen (16) degrees thirty (30) minutes east at the distance of twenty-six (26) feet; thence from said corner No. 23 south fifty (50) degrees east eight and sixty-six hundredths (8 & $\frac{66}{100}$) feet to corner No. 24, a granite rock marked "24–281," the same being corner 4 of said survey No. 259, from which a blazed pine tree thirteen (13) inches in diameter bears north one (1) degree twelve (12) minutes east at the distance of thirty and seven-tenths (30 & $\frac{7}{10}$) feet; thence from said corner No. 24 north sixty-five (65) degrees fifteen (15) minutes east three hundred (300) feet to corner No. 25, a granite rock marked "25–281," the same being corner No. 5 of said survey No. 259, from which a blazed pine tree eighteen (18) — in diameter bears north eighty-nine (89) degrees twenty (20) minutes west at the distance of twelve
7 and five-tenths (12 & $\frac{5}{10}$) feet, and a blazed pine tree ten inches in diameter bears south at the distance of four (4) feet; thence from said corner No. 25 north fifty (50) degrees west three hundred and ten (310) feet to corner No. 26, a granite rock 5 x 9 x 12 inches in size, marked "26–281," the same being corner No. 6 of said survey No. 259, from which a blazed pine tree sixteen (16) inches in diameter bears south ten (10) degrees thirty-one (31) minutes west at the distance of thirty-three (33) feet, and a blazed pine tree eighteen (18) inches in diameter bears south forty-five (45) degrees forty-two (42) minutes west at the distance of fifteen and two-tenths (15 & $\frac{2}{10}$) feet; thence from said corner No. 26 south sixty-five (65) degrees west one hundred and ninety-eight and fifty-two— (198 & $\frac{52}{100}$) feet to corner No. 27, a granite rock 7 x 9 x 11 inches in size, marked 27–281, from which a blazed pine tree fourteen (14) inches in diameter bears north nineteen degrees fifty (50) minutes east at the distance of six (6) feet; a blazed pine tree twelve (12) inches in diameter bears north seventy-two (72) degrees twenty-four (24) minutes west at the distance of twenty-seven and five-tenths (27$\frac{5}{10}$) feet; thence from said corner No. 27 north four hundred and nine & eighty-five hundredths (409 & $\frac{85}{100}$) feet to corner No. 28, a porphyry rock 6 x 8 x 16 inches in size, marked "28–281," the same being corner No. 3 of survey No. 278, from which a blazed pine tree fourteen (14) inches in diameter bears north thirteen (13) degrees forty-six (46) minutes west at the distance of twenty-nine and eight tenths (29 & $\frac{8}{10}$) feet, and a blazed pine tree sixteen (16) inches in diameter

bears south fifty-eight (58) degrees twenty-seven (27) minutes east at the distance of eighteen (18) feet; thence from said corner No. 28 south forty (40) degrees east fifteen hundred (1,500) feet to corner No. 29, the same being corner No. 4 of said survey No. 278, from
8 which a blazed pine tree 16 inches in diameter bears south seventy-one (71) degrees thirty-two (32) minutes west at the distance of nineteen (19) and three-tenths feet, and a blazed pine tree sixteen (16) inches in diameter bears north twenty-two (22) degrees twenty-five (25) minutes east at the distance of five and seven-tenths *tenths* (5 & $\frac{7}{10}$) feet; thence from said corner No. 29 north four hundred and sixty-six and five-tenths (466 & $\frac{5}{10}$) feet to corner No. thirty (30), a porphyry rock 4 x 8 x 14 inches in size, marked "30–281," the same being corner No. 5 of said survey No. 278, from which a blazed pine tree twenty (20) inches in diameter bears north eighty-seven (87) degrees twenty-five (25) minutes west at the distance of seventeen and seven-tenths (17 & $\frac{7}{10}$) feet, and a blazed pine tree twelve inches in diameter bears north fifty (50) degrees ten minutes east at the distance of twenty-nine (29) feet; thence from said corner No. thirty (30) north forty (40) degrees west eight hundred and fifty-two and sixty-five hundredths (852 & $\frac{65}{100}$) feet to corner No. 31, a porphyry rock 8 x 8 x 12 inches in size, marked "31–281," from which a blazed pine tree eleven inches in diameter bears north fifty-seven (57) degrees thirty-one (31) minutes east at the distance of seventeen (17) feet, and a blazed pine tree fourteen inches in diameter bears north forty-two (42) degrees sixteen (16) minutes west at the distance of twelve and two-tenths (12 & $\frac{2}{10}$) feet; thence from said corner No. 31 north eighteen (18) degrees west seven hundred and seventy-two and twenty-five hundredths (772 & $\frac{25}{100}$) feet to corner No. 32, a porphyry rock 7 x 8 x 15 inches in size, marked "32–281;" thence north forty-six (46) degrees east eight hundred and twenty — (822) feet to corner No. 33, a porphyry rock 3 x 6 x 18 inches in size, marked "33–281;" thence east one hundred and eighty-nine and twenty-nine hundredths feet to corner No. 34, a porphyry rock 3 x 4 x 8 inches in size, marked "34–281,"
9 from which a blazed pine tree eighteen — in diameter bears north thirty-three (33) degrees thirty (30) minutes east at the distance of four (4) feet; thence from said corner No. thirty — (34) north three hundred and twenty-four and ninety-five hundredths (324 & $\frac{95}{100}$) feet to south bank of California gulch, four hundred and nine and ninety-five one-hundredths (409 & $\frac{95}{100}$) feet to north bank of said gulch, four hundred and sixty-four and ninety-five hundredths (464 & $\frac{95}{100}$) feet to county road, from — four hundred and seventy-four and ninety-five — (474 & $\frac{95}{100}$) feet to the place of beginning, together with all the mineral-bearing earth, rock, and metals and valuables contained within the said tract of land.

II. That the said plaintiff company claims an estate of inheritance in fee simple in the said land and premises.

III. That the said plaintiff company is now, and was at the times above and hereinafter mentioned, entitled to the immediate and exclusive possession of the above-described land and premises.

IV. That while the said plaintiff company was so the owner of, seized and possessed, and entitled to the possession of the said land and premises, the said defendants afterward and on the 2nd day of January, A. D. 1883, entered upon that portion of the said mining claim, land, and premises particularly described as follows, namely:

Beginning at cor. No. 1, same as corner No. 4, Brooklyn lode, thence S. eighteen degrees 10 minutes E. 750 ft. to west side center stake, 1,500 feet to corner No. 2, same as cor. No. 3, Brooklyn lode, whence mon. on Mt. Elbert b'rs S. 53 degrees W., South Twin Peak b'rs S. sixty degrees 14 minutes W., pine stump 14" dia. b'rs No.
10 62 degrees 50 minutes west 8.9 ft., pine stump 26" dia. b'rs S. 51 degrees W. 14.2 ft., cor. 30–281 b'rs S. 31 degrees 6 minutes E. 12.6 ft.; thence 71 degrees 50 minutes E. 245.5 ft. to cor. No. 3; thence No. 18 degrees 10 minutes W. 750 ft. to E. side center stake, 1,500 ft. to cor. No. 4, whence Mt. Elbert b'rs S. 51 degrees 30 minutes W., pk., name unknown, b'rs S. 45 degrees 15 minutes W., pine stump 13" dia. b'rs N. 40 degrees 20 minutes E. 44.5 ft., pine stump 15 inches in dia. b'rs S. 38 degrees 35 minutes E. 15.4 ft.; thence S. 71 degrees 50 minutes W. 245.5 ft. to cor. 1, the place of beginning, being about ten acres of the premises herein first above described, and near the east boundary line thereof; and then and there took possession of that portion of the said mining claim, land, and premises, and ousted the said plaintiff company therefrom, and from thence hitherto have wrongfully and unlawfully retained and withheld and still do wrongfully withhold and detain the same and the possession thereof from the said plaintiff company.

That the value of that portion of the said mining claim, land, and premises from which the plaintiffs were so ousted by the said defendants and which they still unlawfully detain from the said plaintiff is over fifty thousand (50,000) dollars, and that the rents, issues, and profits thereof while the defendants have so taken and held the possession of the same and the damages by such detention is five thousand (5,000) dollars, and the plaintiff company has thereby been damaged in the sum of five thousand (5,000) dollars.

Wherefore the plaintiff company demands judgment against the said defendants (1) for the recovery of the possession of the said demanded premises, and (2) for the sum of $5,000 damages, and for the costs of this action.

(Signed) G. G. SYMES,
Att'y for Pl'ff Co.

11 (Endorsed:) 1138. In U. S. circuit court. Iron Silver Mining Co. *vs.* J. L. Sullivan *et al.* Complaint. Filed Mar. 5, 1883. (S'g'd) Edward F. Bishop, clerk. G. G. Symes, att'y for pl'ff Co.

And the said summons, with the proof of service thereon by the marshal, is in the words and figures as follows, to wit:

Summons.

In the Circuit Court of the United States for the District of Colorado.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

THE IRON SILVER MINING COMPANY, Plaintiff,
versus
J. L. SULLIVAN, JOHN RYAN, PHILLIP Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty, Defendants.

Complaint. Filed in the Clerk's Office this 5th Day of March, A. D. 1883.

The President of the United States of America to the above-named defendants, Greeting:

You and each of you are hereby notified that an action has been brought in said court by the above-named plaintiff against you, as defendants, to recover the possession of certain specific real
12 property, situate in the county of Lake and State of Colorado, to wit, parcel of the Wells and Moyer placer claim in California mining district; and also to recover the sum of $5,000.00 for the rents, issues, and profits, and damages for the detention of said premises, as more fully set forth in the complaint filed herein, and to which reference is here made, and for the costs of this suit.

You are hereby required to appear and demur or answer to the complaint filed in said action in said court within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise within forty days from the day of service; and if you fail so to do the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, and will apply to the court for the relief demanded therein.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in said district, this 5th day of March, A. D. 1883, and of the Independence of the United States the 107th year.

(S'g'd)
[SEAL CIR. COURT.]

EDWARD F. BISHOP, *Clerk,*
By WM. E. ROGERS,
Deputy Clerk.

Proof of Service.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

LEADVILLE, *M'ch 10th, A. D.* 1883.

13 I hereby certify that I received the within writ on the 10th day of March, A. D. 1883, and that I have personally served

the same upon the said defendants, J. L. Sullivan, John Ryan, Richard Foley, M. J. Stewart, C. J. O'Laughlin, P. J. McNulty, Phillip Harrington, Timothy Carroll, K. C. Fisher, Timothy Santry, by delivering to J. L. Sullivan, John Ryan, Richard Foley, M. J. Stewart, C. J. O'Laughlin, P. J. McNulty, Phillip Harrington, Timothy Carroll, K. C. Fisher, Timothy Santry, personally, a true copy of the within writ at the day and time as follows: As to J. L. Sullivan, John Ryan, Richard Foley, N. J. Stewart, C. J. O'Laughlin, P. J. McNulty, Phillip Harrington, Timothy Carroll, K. C. Fisher, Timothy Santry, at county of Lake, Colo., on the 10th day of March, A. D. 1883.

This writ therefore returned satisfied, as the law directs, this 12th day of March, A. D. 1883.

(S'g'd) WALTER A. SMITH, *Marshal*,
By DAVID A. COWELL,
Deputy Marshal.

(Endorsed:) Gen. No. 1138. Circuit court of the United States for the district of Colorado. The Iron Silver Min'g Co., plaintiff, *versus* J. L. Sullivan *et al.*, defendants. Summons. Filed this 12th day of Mar., A. D. 1883. (S'g'd) Edward F. Bishop, clerk, by Wm. E. Rogers, deputy clerk. G. G. Symes, of Denver, attorney for plaintiff.

And afterwards and on, to wit, the 10th day of April, A. D. 1883, came the said defendants, by Messrs. Markham, Patterson, Thomas & Lyles, their attorneys, and file in said court and in said cause their answer to the complaint heretofore filed herein; and the said
14 answer is in words and figures as follows, to wit:

Answer.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the Eighth Judicial Circuit of the United States within and for said District.

THE IRON SILVER MINING CO., Pl'ff, }
vs. }
J. L. SULLIVAN *et al.* }

The defendants, answering the complaint of the plaintiffs, say:

They admit the citizenship of the parties plaintiff and defendant herein, as alleged in said complaint.

They admit that the plaintiff is the owner of the placer claim described in the first paragraph of said complaint, and known as and called the Wells & Moyer placer claim, by an estate of fee simple to the extent of the grant made in and by the patent heretofore issued therefor by the Government of the United States, but no further; and they deny that it thereby or otherwise owns or is possessed of all the mineral-bearing rock, metals, or valuables or any portion thereof contained therein.

The defendants deny that on the second day of January, A. D. 1883, or at any other time or times before or since the said date, the defendants or any of them, while the plaintiff was possessed
15 of the said claim or otherwise, entered upon the premises described in said complaint, in the fourth paragraph thereof, or any part of the same or ousted the said company therefrom, or that they have wrongfully or unlawfully claimed or withheld, or do wrongfully or unlawfully claim or withhold, said premises or any part or portion thereof.

That whether the said premises is worth the sum of *the sum of* fifty thousand dollars these defendants have not and cannot as yet obtain sufficient information upon which to base a belief, but that — it is worth that sum or any sum of money it is by reason of a certain mineral deposit in place therein contained, and they aver that as a placer or part of a placer claim or for or by reason of any placer deposits, either of gold or silver or other metal which it contains, it is of no value whatsoever. They deny that the rents, issues, or profits of said premises are or were of the value of five thousand dollars or any other sum of money, or that the plaintiff has been damaged in the sum of five thousand dollars or any other sum.

2. The defendants, further answering the said complaint, say that heretofore a patent was issued by the Government of the United States to the grantors of the plaintiff for the premises described in said complaint upon their application for and entry of it in the proper land office of the United States as the Wells & Moyer placer claim.

That subsequently and some time in the year A. D. 1879, as the defendants are informed and believe, a patent was issued therefor by the said Government and in pursuance of said application and entry; that by a certain clause and exemption in the grant
16 of said patent all veins, lodes, or deposits of mineral-bearing ore in rock in place known or claimed to exist within the boundaries of said placer claim at the time of said patent were and are expressly exempted, excepted, and excluded therefrom.

And these defendants aver that at the time of the survey of and application for a patent for said placer claim and at the time of the entry thereof, as well as at the time of the issuance of the patent therefor as aforesaid, a deposit of mineral ore in rock in place carrying carbonates of lead and silver and other precious metals was known and claimed to exist in said premises known as the Wells & Moyer placer claim, underlying the bed-rock beneath and placer deposits which said premises might contain.

And these defendants further aver that they are informed and believe that the patentees of said placer claim made the said location and entry of said claim to secure the said mineral deposit in place and not for the purpose of securing any placer deposits whatever, and such work as the plaintiff has done and is doing in and underneath said premises has been and is upon said deposit of silver and lead bearing mineral in rock in place.

The defendants further allege that on, to wit, the second day of January, A. D. 1883, they went upon that part of the said Wells &

Moyer placer claim described in the fourth paragraph of said complaint and located the same as a lode claim upon said deposit, and have held and do hold the same subject to any and all rights and privileges which the plaintiff claims to the surface thereof by reason of the grant contained in the patent issued as aforesaid to its grantors as the Wells & Moyer placer claim.

17 Wherefore the defendants pray to be hence dismissed with their costs, &c.

(S'g'd) MARKHAM, PATTERSON & THOMAS,
Att'ys for Def'ts.

(Endorsed:) 1138. The Iron Silver Mining Company *v.* J. L. Sullivan *et al.* Answer. Filed Apr. 10, 1883. (S'g'd) Edward F. Bishop, clerk. Markham, Patterson, Thomas & Lyles, for def'ts.

And afterwards and on, to wit, the 22nd day of June, A. D. 1883, the same being one of the regular juridical days of the May term, A. D. 1883 of said court—present, the Honorable George W. McCrary, circuit judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Demurrer to Part of Answer Sustained.

THE IRON SILVER MINING COMPANY *vs.* J. L. SULLIVAN, JOHN RYAN, PHILLIP Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty.	1138. For Possession of Specific Real Property and for Damages.

At this day comes the said plaintiff, by G. G. Symes, Esq., its attorney, and the said defendants, by C. S. Thomas, Esq., their attorney, also come, and the demurrer of the said plaintiff to certain parts of the answer of the said defendants herein, to wit, to that part
18 of the said answer contained in the 18th to the 26th line, inclusive, on the 2nd page thereof; to that contained in the 28th line of the 4th page thereof; to that portion in the lines from 1 to 18 of the 5th page thereof; to that contained in the 19th to the 28th lines on the said 5th page, and from the first to the 5th lines of the 6th page thereof, and to that portion contained in the 6th to the 23d lines, inclusive, on the 6th page thereof, having heretofore come on to be heard, and having been argued by counsel and by the court taken under advisement, and the court being now sufficiently advised in the premises, it seemeth to the court here that the said answer is not sufficient in law; and so the said demurrer is sustained.

And afterwards and on, to wit, the 23rd day of June, A. D. 1883, the same being one of the regular juridical days of the May term, A. D. 1883, of said court—present, the Honorable George W. McCrary, circuit judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Leave to Amend Answer.

THE IRON SILVER MINING COMPANY } 1138. For Possession
vs. } Specific Real Prop-
JOHN RYAN, PHILLIP HARRINGTON, *et al.* } erty, &c.

At this day comes the said plaintiff, by G. G. Symes, Esq., its attorney, and the said defendants, by C. S. Thomas, Esq., their attorney, also come; and thereupon, on motion of the said defendants, it is ordered by the court that the said defendants have leave to amend their answer herein as they shall be advised.

19 And afterwards and on, to wit, the 25th day of June, A. D. 1883, came again the said defendants, by Messrs. Markham, Patterson & Thomas, their attorneys, and filed in said court and in said cause their amended answer to the complaint heretofore filed herein; and the said amended answer is in words and figures as follows, to wit:

Amended Answer.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

In the Circuit Court of the Eighth Judicial Circuit in and for said District.

THE IRON SILVER MINING COMPANY }
vs. }
J. L. SULLIVAN *et al.* }

The defendants now come and file this their amended answer as to the second and affirmative part thereof, and say:

1. That heretofore and on, to wit, the 11th day of March, A. D. 1879, a certain patent was issued by the Government of the United States to Thomas S. Wells and William Moyer, the grantors of the plaintiff, for the premises described in said complaint, upon the application thereof and entry of said premises, as the Wells and Moyer placer claim, the same being what is known as a
20 placer patent or patent of and for a placer mining claim, with all and singular the covenants, restrictions, reservations, and exceptions inserted by the Government of the United States; that, among others, the following restrictions and exceptions appear and are embodied within said placer patent and grant, and which are a part and parcel of said patent, to wit:

"First. That the grant hereby made is restricted in its exterior limits to the boundaries of the said lot No. 281, as hereinbefore described, and to any veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits which may hereafter be discovered within said limits and which are not claimed or known to exist at the date hereof.

Second. That should any vein or lode of quartz or other rock in

place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits be claimed or known to exist within the above-described premises at the date hereof the same is expressly excepted and excluded from these presents."

2. That the number of the said lot known as the Wells & Moyer placer claim aforesaid is "281."

3. And these defendants aver that at the time of the location of said placer claim and the survey thereof, and at the time of the application for said patent, and at the time of the entry of said land thereunder, and at the time and date of the issuing and granting of said patent a lode, vein, or deposit of mineral ore in rock in place carrying carbonates of lead and silver and of great value was known to exist and was claimed to exist within the boundaries and underneath the surface of said Wells & Moyer placer claim No.
21 281, and that the fact that said vein was claimed to exist and did exist as aforesaid within said premises was known to the patentees of said claim at all the times hereinbefore mentioned.

4. And the defendants further allege that the said application for said patent by said patentees and grantors of said plaintiff did not include any application whatever for a patent of or to said lode or vein within its boundaries aforesaid; wherefore these defendants aver that the said failure to include said vein or lode in said application amounted to a conclusive declaration by said patentees that they made no claim whatever to said lode or vein or any part thereof, and that the same was expressly excepted and excluded from and did not pass with the grant of said premises in and by said patent for said premises.

5. And these defendants allege that the said patentees, as the defendants are informed and believe, made application for said patent and acquired the same for the purpose of obtaining title to said lode, vein, or deposit, and for no other purpose, and that all and singular the work done thereon has been done by the plaintiff on said lode deposit and not on any placer deposit whatever contained therein.

6. And these defendants, further answering, say that on, to wit, the first day of January, A. D. 1883, the defendants, then and now being citizens of the United States, went upon the premises last described in said complaint and sunk a shaft thereon, which at the depth of more than ten feet below the lowest part of the rim of said shaft at the surface cut, uncovered, and exposed said lode vein or deposit.

7. That the defendants thereupon proceeded to and did
22 locate the same as a lode claim by erecting at the point where they cut the said vein a plain sign or notice containing the name of said lode, to wit, the Kit Carson; the date of said location, to wit, the — day of January, 1883, and their own names as locators thereof; that they thereupon then caused the surface boundaries of said claim to be marked by six substantial posts, one at each corner and one at the center of each side line, and hewed in the side in toward the said claim; and afterwards and on the — day of ——, A. D. 1883, they caused to be filed a location certificate

of said claim containing the name of said lode, the names of said locators, the date of said location, the number of feet in length claimed on each side of the center of the discovery shaft, and the general course and direction of said claim as near as may be.

Wherefore the defendants claim the right to occupy and possess the said premises in full accordance with and by virtue of a full compliance with the requirements of the laws of the United States and of the State of Colorado, the said vein, lode, or deposit being a part and parcel of the unappropriated public mineral domain of the United States, and that the acts and doings of the defendants, as hereinabove set forth, constitute the said supposed trespass complained of by the plaintiff.

Wherefore the defendants pray to be hence dismissed with their costs.

(S'g'd) MARKHAM, PATTERSON & THOMAS,
Att'ys for Def'ts.

(Endorsed:) 1138. The Iron Silver Mining Co. *vs.* J. L. Sul-
23 livan *et al.* Amended answer. Filed Jun- 25, 1883. (S'g'd) Edward F. Bishop, clerk. Markham, Patterson & Thomas, for def'ts.

And afterwards and on, to wit, the 25th day of June, A. D. 1883, the same being one of the regular juridical days of the May term, A. D. 1883, of said court—present, the Honorable George W. McCrary, circuit judge, and the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Demurrer Sustained and for Judgment.

THE IRON SILVER MINING COMPANY *vs.* J. L. SULLIVAN, JOHN RYAN, *et al.* } 1138. For Possession of Specific Real Property, &c.

At this day comes the said plaintiff, by G. G. Symes, Esq., its attorney, and the said defendants, by C. S. Thomas, Esq., their attorney, also come; and the demurrer of the said plaintiff to the amended answer of the said defendants coming on now to be heard, and the court being now sufficiently advised in the premises, it seemeth to the court here that the said amended answer and the matters and things therein alleged *is* not sufficient in law, and so the said demurrer is sustained.

And thereupon the said defendants here, in open court, say they do and will stand by their said amended answer.

And the said plaintiff now here, in open court, dismisses his claim for damages herein.

24 Wherefore, on motion of the said plaintiff, it is considered by the court that, notwithstanding anything in the said answer and amended answer herein alleged, the said plaintiff is entitled to the possession of the premises in its complaint described and its costs, to be taxed, and let judgment be entered herein accordingly.

And thereupon and on the same day, to wit, the 25th day of June, A. D. 1883, judgment was entered against the said defendants in the judgment book of said court in pursuance of the statutes and rules of court; and the said judgment is in words and figures as follows, to wit:

Judgment.

THE IRON SILVER MINING COMPANY *vs.* J. L. SULLIVAN, JOHN RYAN, PHILLIP Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty.	1138. For Possession of Specific Real Property and for Damages.

On this 25th day of June, A. D. 1883, the same being one of the regular juridical days of the May term, A. D. 1883, of said court, there being present the Honorable George W. McCrary, circuit judge, and the Honorable Moses Hallett, district judge—

It is considered by the court that the said plaintiff do have
25 and recover of and from the said defendants possession of the premises, lands, and tenements in said complaint mentioned, to wit, part of that certain tract of land and mining claim situated in California mining district, county of Lake, and State of Colorado, and known and called the Wells and Moyer placer claim, consisting of one hundred and ninety-three acres and forty-three hundredths of an acre of land, more or less, and particularly described by metes and bounds as follows, with magnetic variations at 15 degrees east, to wit: Beginning at corner No. 1 a porphyry rock 5 x 6 x 9 inches in size, marked "1–281," from which U. S. locating monument No. 1 bears north seventy-three (73) degrees one minute and thirty-six (36) seconds west, at the distance of ten thousand 8 hundred and seventy and sixty-three hundredths (10,870 & $\frac{63}{100}$) feet, and the peak of Bald Mountain bears south sixty-five degrees thirty-five (35) minutes east, thence from said corner No. 1 south seventy-nine (79) degrees twenty-eight (28) minutes east five hundred and ninety and five-tenths (590 & $\frac{9}{10}$) feet to corner No. 2, a porphyry rock 5 x 7 x 12 inches in size, marked "2–281;" thence south fifty-eight (58) degrees eight minutes east four hundred and thirty-six (436) feet to road, seven hundred and twenty-one (721) feet to corner No. 3, a granite rock 5 x 7 x 13 inches in size, marked "3–281;" thence south twenty-five (25) degrees four minutes west sixty-eight feet to corner No. 4, a granite rock 7 x 8 x 8 inches in size, marked "4–281;" thence south sixty-six (66) degrees eight (8) minutes east seven hundred and thirty-eight (738) feet to corner No. 5, a granite rock seven by eleven by thirteen inches in size, marked "5–281;" thence south twenty-nine (29) degrees forty-eight (48) minutes west twenty (20) feet to the north bank of California gulch, fifty-six (56) feet to stream, ninety (90) feet to south bank of California gulch, one hundred and thirty-

three (133) feet to corner No. 6, a quartz rock 8 x 11 x 12
26 inches in size, marked "6–281;" thence north seventy-two (72) degrees fifty (50) minutes west two hundred and fifty (250) feet to corner No. 7, a quartz rock 6 x 8 x 12 inches in size, marked "7–281;" thence south twenty (20) degrees forty-eight (48) minutes west two hundred and forty (240) feet to north bank of Eureka gulch, five hundred and fifty (550) feet to south bank of said gulch, eight hundred and forty-five (845) feet to corner No. 8, a porphyry rock 7 x 9 x 12 inches in size, marked "8–281;" thence south seventy-two (72) degrees eight (8) minutes west two hundred feet to corner No. 9, a porphyry rock 5 x 7 x 10 inches in size, marked "9–281;" thence south four hundred (400) feet to corner No. 10, a quartz rock 5 x 6 x 10 inches in size, marked "10–281," from which a blazed pine tree thirteen (13) inches in diameter bears north thirty-two (32) degrees ten (10) minutes east at the distance of eight and three-tenths (8 & $\frac{3}{10}$) feet, and a pine fourteen (14) inches in diameter, blazed and marked "10–281," bears south seventy-one (71) degrees thirty-eight (38) minutes east at the distance of ten (10) feet; thence from said corner No. 10 south thirty-nine degrees fifty-six (56) minutes west seven hundred and fifty feet to corner No. 11, a quartz rock 4 x 811 inches in size, marked "11–281," from which a pine tree sixteen inches in diameter, blazed and marked "11–281," bears north sixty-two (62) degrees twelve (12) minutes east at the distance of twelve (12) feet, and a pine tree nine (9) inches in diameter, blazed and marked "11–281," bears south fifteen degrees and twenty-one (21) minutes east at the distance of ten and eighth-tenths (10 & $\frac{3}{10}$) feet; thence from said corner No. 11 west one hundred and twenty-eight and seventy-one hundredths (128 & $\frac{71}{100}$) feet to corner No. 12, a granite rock 5 x 7 x 11 inches in size, marked "12–281," from which a pine tree thirteen (13) inches in diameter, blazed and marked "12–281," bears south five (5)
27 degrees thirteen (13) minutes east at the distance of sixteen and two-tenths (16 & $\frac{2}{10}$) feet, and a pine tree eleven inches in diameter, blazed and marked "12–281," bears south fifty-nine (59) degrees and eight minutes west at a distance of fourteen and *and* eighth-tenths (14 & $\frac{8}{10}$) feet; thence from said corner No. 12 south eleven hundred sixty-four and one-tenth (1164 & $\frac{1}{10}$) feet to corner No. 13, a granite rock 5 x 11 x 14 inches in size, from which Mount Sheridan bears south seventy-three (73) degrees thirty-six (36) minutes east, monument on Mt. Elbert bears south fifty-four (54) degrees forty-six (46) minutes west, a pine tree nine inches in diameter, blazed and marked "13–281," bears south twenty-four (24) degrees eight (8) minutes west at the distance of ten and five-tenths (10 & $\frac{5}{10}$) feet, and a pine tree five (5) inches in diameter, blazed and marked, bears north seventy-seventy (77) degrees forty-seven (47) minutes west at the distance of thirteen (13) feet; thence from said corner No. 13 west thirty-five hundred and ninety-four and sixteen-hundredths (3594 & $\frac{16}{100}$) ft. to corner No. 14, a granite rock *granite rock* 5 x 10 x 14 inches in size, marked "14–281," from which a pine tree eleven (11) inches in diameter, blazed and marked "14–281," bears north twenty-nine (29) degrees twenty-two (22) minutes east at the distance of

eleven and two-tenths (11 & $\frac{2}{10}$) feet, and a blazed pine tree twelve (12) inches in diameter, marked "14–281," bears north seventy-one (71) degrees twenty-five (25) minutes west at the distance of thirty-— (31) feet; thence from said corner No. 14 north twenty-six (26) minutes west eleven hundred and thirty-eight and sixty-nine hundredths (1138 & $\frac{69}{100}$) feet to corner No. 15, a quartz rock 5 x 7 x 9 inches in size, marked "15–218," from which a blazed pine tree seventeen (17) inches in diameter bears north sixty-five (65) degrees fifteen (15) minutes west at the distance of eleven and one-
28 tenth (11 & $\frac{1}{10}$) ft., a double pine tree, blazed and marked "15–281," bears south nineteen (19) degrees ten (10) minutes east at the distance of ten (10) feet; thence from said corner No. 15 east five hundred and ninety (590) feet to corner No. sixteen (16), a porphyry rock 7 x 8 x 11 inches in size, marked "16–281," the same being corner No. 3 of survey No. 236; thence north sixty-five (65) degrees fifteen (15) minutes east along the southerly boundary of said survey No. 236 five hundred and twenty-seven (527) feet to corner No. 17, a porphyry rock 5 x 12 x 12 inches in size, marked "17–281," the same being corner No. 1 of survey No. 259; thence south fifty (50) degrees east four hundred and seventy-two and forty-seven hundredths (472 & $\frac{47}{100}$) feet to corner No. 18, a granite rock 3 x 8 x 14 inches in size, marked "18–281," the same being corner No. 2 of said survey No. 259; thence north sixty-five (65) degrees east five hundred and thirty-one and twenty-nine hundredths (539 & $\frac{29}{100}$) feet to corner No. 19, a granite rock 5 x 5 x 15 inches in size, marked "19–281;" thence south one hundred and ninety (190) feet along the west boundary of the Oro La Plata lode to corner No. 20, a granite rock 6 x 6 x 18 inches in size, marked "20–281," from which a blazed pine tree seven (7) inches in diameter bears north nineteen (19) degrees thirty (30) minutes east at the distance of five and five-tenths (5 & $\frac{5}{10}$) feet and a blazed pine tree twelve (12) inches in diameter bears south eighty (80) degrees thirty (30) minutes west at the distance of nineteen (19) feet; thence from said corner No. 20 along the south boundary of said Oro La Plata lode three hundred (300) feet to corner No. 21, a granite rock 6 x 7 x 10 inches in size, marked "21–281," from which a blazed pine tree fourteen (14) inches in diameter bears north seventy-two (72) degrees six (6) min-
29 utes east at the distance of twenty-one (21) and one-tenth feet, and a blazed pine six inches in diameter bears north thirty-five (35) degrees thirty-three (33) minutes east at the distance of twelve and eight-tenths feet; thence from said corner No. 21 north along the east boundary of Oro La Plata lode three hundred and twenty-nine and eighty-nine hundredths (329 & $\frac{89}{100}$) feet to corner No. 22, a quartz rock 6 x 6 x 9 inches in size, marked "22–281;" thence north sixty-five (65) degrees east one hundred and fifty-two and seven-tenths (152 & $\frac{7}{10}$) feet to corner No. 23, a lime rock marked "23–281," the same being No. 3 of said survey No. 259, from which a blazed pine tree fourteen inches in diameter bears south seventy-two (72) degrees four (4) minutes east at the distance of eleven and eight-tenths (11 & $\frac{8}{10}$) feet and a blazed pine tree ten (10) inches in diameter bears north sixteen (16) degrees thirty (30)

minutes east at the distance of twenty-six (26) feet; thence from said corner No. 23 south fifty (50) degress east eight and sixty-six hundredths (8 & $\frac{66}{100}$) feet to corner No. 24, a granite rock marked "24–281," the same being corner 4 of said survey No. 259, from which a blazed pine tree thirteen (13) inches in diameter bears north one (1) degree twelve (12) minutes east at the distance of thirty and seven-tenths (30 & $\frac{7}{10}$) feet; thence from said corner No. 24 north sixty-five (65) degrees fifteen (15) minutes east three hundred (300) feet to corner No. 25, a granite rock marked "25–281," the same being corner 5 of said survey No. 259, from which a blazed pine tree eighteen (18) — in diameter bears north eighty-nine (89) degrees twenty (20) minutes west at the distance of twelve and five-tenths (12 & $\frac{5}{10}$) feet and a blazed pine tree ten inches in diameter bears south at the distance of four (4) feet; thence from said corner No. 25 north fifty (50) degrees
30 west three hundred and ten (310) feet to corner No. 26, a granite rock 5 x 9 x 12 inches in size, marked "26–281," the same being corner No. 6 of said survey No. 259, from which a blazed pine tree sixteen (16) inches in diameter bears south ten (10) degrees thirty-one (31) minutes west at the distance of thirty-three (33) feet, and a blazed pine tree eighteen (18) inches in diameter bears south forty-five (45) degrees forty-two (42) minutes west at the distance of fifteen and two-tenths (15 & $\frac{2}{10}$) feet; thence from said corner No. 26 south sixty-five (65) degrees west one hundred and ninety-eight and fifty-two — (198 & $\frac{52}{100}$) feet to corner No. 27, a granite rock 7 x 9 x 11 inches in size, marked 27–281, from which a blazed pine tree fourteen (14) inches in diameter bears north nineteen degrees fifty (50) minutes east at the distance of six (6) feet, a blazed pine tree twelve (12) inches in diameter bears north seventy-two (72) degrees twenty-four (24) minutes west at the distance of twenty-seven and five-tenths ($27\frac{5}{10}$) feet; thence from said corner No. 27 north four hundred and nine & eighty-five hundredths (409 & $\frac{85}{100}$) feet to corner No. 28, a porphyry rock 6 x 8 x 16 inches in size, marked "28–281," the same being corner No. 3 of survey No. 278, from which a blazed pine tree fourteen (14) inches in diameter bears north thirteen (13) degrees forty-six (46) minutes west at the distance of twenty-nine and eight-tenths ($29\frac{8}{10}$) feet and a blazed pine tree sixteen (16) inches in diameter bears south fifty-eight (58) degrees twenty-seven (27) minutes east at the distance of eighteen (18) feet; thence from said corner No. 28 south forty (40) degrees east fifteen hundred (1500) feet to corner No. 29, the same being corner No. 4 of said survey No. 278, from which a blazed pine tree (16) inches in diameter bears south seventy-one (71) degrees thirty-two (32) minutes west at the distance of nineteen (19) and three-tenths feet and a blazed
31 pine tree sixteen (16) inches in diameter bears north twenty-two (22) degrees twenty-five (25) minutes east at the distance of five and seven-tenths *tenths* (5 & $\frac{7}{10}$) feet; thence from said corner No. 29 north four hundred and sixty-six and five-tenths (466 & $\frac{5}{10}$) feet to corner No. thirty (30), a porphyry rock 4 x 8 x 14 inches in size, marked "30–281," the same being corner No. 5 of said survey No. 278, from which a blazed pine tree twenty (20) inches in diam-

eter bears north eighty-seven (87) degrees twenty-five (25) minutes west at the distance of seventeen and seven-tenths (17 & $\frac{7}{10}$) feet and a blazed pine tree twelve inches in diameter bears north fifty (50) degrees ten minutes east at the distance of twenty-nine (29) feet; thence from said corner No. thirty (30) north forty (40) degrees west eight hundred and fifty-two and sixty-five hundredths (852 & $\frac{65}{100}$) feet to corner No. 31, a porphyry rock 8 x 8 x 12 inches in size, marked "31–281," from which a blazed pine tree eleven inches in diameter bears north fifty-seven (57) degrees thirty-one (31) minutes east at the distance of seventeen (17) feet and a blazed pine tree fourteen inches in diameter bears north forty-two (42) degrees sixteen (16) minutes west at the distance of twelve and two-tenths (12 & $\frac{2}{10}$) feet; thence from said corner No. 31 north eighteen (18) degrees west seven hundred and seventy-two and twenty-five hundredths (772 & $\frac{25}{100}$) feet to corner No. 32, a porphyry rock 7 x 8 x 15 inches in size, marked "32–281;" thence north forty-six (46) degrees east eight hundred and twenty (822) feet to corner No. 33, a porphyry rock 3 x 6 x 18 inches in size, marked "33–281;" thence east one hundred and eighty-nine and twenty-nine hundredths feet to corner No. 34, a porphyry rock 3 x 4 x 8 inches in size, marked "34–281," from which a blazed pine tree eighteen — in diameter bears north thirty-three (33) degrees thirty (30) minutes east at the distance of four (4) feet; thence from said corner No. thirty (34) north three hundred and twenty-four and ninety-five hundredths
32 (324 & $\frac{95}{100}$) feet to south bank of California gulch, four hundred and nine and ninety-five hundredths (409 & $\frac{95}{100}$) feet to north bank of said gulch, four hundred and sixty-four and ninety-five hundredths (464 & $\frac{95}{100}$) feet to county road, *from* four hundred and seventy-four and ninety-five (474 & $\frac{95}{100}$) feet to the place of beginning, to wit: Beginning at cor. No. 1, same as corner No. 4, Brooklyn lode, thence S. eighteen degrees 10 minutes E. 750 ft. to west side center stake, 1,500 feet to corner No. 2, same as cor. No. 3, Broklyn lode, whence mon. on Mt. Elbert b'rs S. 53 degrees W., South Twin Peak b'rs S. sixty degrees 14 minutes W., pine stump 14″ dia. b'rs No. 62 degrees 50 minutes west 8.9 ft., pine stump 26″ dia. b'rs S. 51 degrees W. 14.2 ft., cor. 30–281 b'rs S. 31 degrees 6 minutes E. 12.6 ft.; thence N. 71 degrees 50 minutes E. 245.5 ft. to cor. No. 3; thence No. 18 degrees 10 minutes W. 750 ft. to E. side center stake, 1,500 ft. to cor. No. 4, whence Mt. Elbert b'rs S. 51 degrees 30 minutes W., pk., name unknown, b'rs S. 45 degrees 15 minutes W., pine stup 13″ dia. b'rs No. 40 degrees 20 minutes E. 44.5 ft., pine stump 15 inches in dia. b'rs S. 38 degrees 35 minutes E. 15.4 ft.; thence S. 71 degrees 50 minutes W. 245.5 ft. to cor. 1, the place of beginning, being about ten acres of the premises herein first above described, and near the east boundary line thereof, and that it have a writ of possession therefor.

It is further considered by the court that the said plaintiff do have and recover of and from the said defendants its costs by it in this behalf laid out and expended, to be taxed, and have execution therefor.

33 And afterwards and on, to wit, the 19th day of September, A. D. 1883, came again the said defendants, by Messrs. C. S. Thomas and J. B. Belford, their attorneys, and filed in said court and in said cause their petition for a writ of error; and the said petition is in words and figures as follows, to wit:

Petition for Writ of Error.

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

To the honorable justices of the Supreme Court of the United States:

Now comes J. L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, R. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty, by Charles S. Thomas and James B. Belford, their attorneys, and complain that in the record and proceedings and also in the rendition of the judgment in a suit between The Iron Silver Mining Company, plaintiff, and J. L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, R. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty, defendants, tried in the circuit court of the United States for the district of Colorado, at the May term thereof, A. D. 1883, in which suit judgment was rendered against said defendants on the 28th day of June, A. D. 1883, manifest error hath intervened, to the great damage of the said defendants; wherefore they pray for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court of the United States.

34 C. S. THOMAS,
J. B. BELFORD,
For Petitioners.

(Endorsed:) No. 1138. Circuit court U. S. Iron Silver Mining Company *vs.* J. L. Sullivan *et al.* Petition for writ of error. Filed Sep. 19, 1883. (S'g'd) Edward F. Bishop, clerk. C. S. Thomas, J. B. Belford, att'ys for def'ts.

And afterwards and on, to wit, the 27th day of February, A. D. 1884, there was filed in said court and in said cause a mandate from the Supreme Court of the United States; and the said mandate from Supreme Court is in words and figures as follows, to wit:

Mandate from Supreme Court.

35 UNITED STATES OF AMERICA, *ss:*

Seal Supreme Court. The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Colorado, Greeting:

Whereas lately, in the circuit court of the United States for the

district of Colorado, before you or some of you, in a cause between The Iron Silver Mining Company, plaintiff, and J. L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty, defendants, wherein the judgment of the said circuit court entered in said cause is in the following words, viz:

"On this 25th day of June, A. D. 1883, the same being one of the regular juridical days of the May term, A. D. 1883, of said court, there being present the Honorable George W. McCrary, circuit judge, and the Honorable Moses Hallett, district judge—

It is considered by the court that the said plaintiff do have and recover of and from the said defendants possession of the premises, lands, and tenements in said complaint mentioned, to wit: Part of that certain tract of land and mining claim situated in California mining district, county of Lake, and State of Colorado, and known and called the Wells and Moyer placer claim, consisting of one hundred and ninety-three acres and forty-three hundredths of an acre of land, more or less, and particularly described by metes and bounds as follows, with magnetic variations at 15 degrees east, to wit: Beginning at corner No. 1, a porphyry rock 5 x 6 x 9 inches in size, marked "1–281," from which U. S. locating monument No. 1 bears north seventy-three (73) degrees one (1) minute and thirty-six (36) seconds west at the distance of ten thousand eight hundred and seventy and sixty-three hundredths (10,870.63) feet, and the peak of Bald Mountain bears south sixty-five degrees thirty-five (35) minutes east; thence from said corner No. 1 south seventy-nine (79) degrees twenty-eight (28) minutes east five hundred and ninety and five-tenths (590.5) feet to corner No. 2, a porphyry rock 5 x 7 x 12 inches in size, marked "2–281;" thence south fifty-eight (58) degrees eight minutes east four hundred and thirty-six (436) feet to road, seven hundred and twenty-one (721) feet to corner No. 3, a granite rock 5 x 7 x 13 inches in size, marked "3–281;" thence south twenty-five (25) degrees four minutes west sixty-eight feet to corner No. 4, a granite rock 7 x 8 x 8 inches in size, marked "4–281;" thence south sixty-six (66) degrees eight (8) minutes east seven hundred and thirty-eight (738) feet to corner No. 5, a granite rock seven by eleven by thirteen inches in size, marked "5–281;" thence south twenty-nine (29) degrees forty-eight (48) minutes west twenty (20) feet to the north bank of California gulch, fifty-six (56) feet to stream, ninety (90) feet to south bank of California gulch, one hundred and thirty-three (133) feet to corner No. 6, a quartz rock 8 x 11 x 12 inches in size, marked "6–281;" thence north seventy-two (72) degrees fifty (50) minutes west two hundred and fifty (250) feet to corner No. 7, quartz rock 6 x 8 x 12 inches in size, marked "7–281;" thence south twenty (20) degrees forty-eight (48) minutes west two hundred and forty (240) feet to north bank of Eureka gulch, five hundred and fifty (550) feet to south bank of said gulch, eight hundred and forty-five (845) feet to corner No. 8, a porphyry rock 7 x 9 x 12 inches in size, marked "8–281;" thence south seventy-two (72) degrees eight (8) minutes west two hundred feet to corner No. 9, a porphyry rock 5 x 7 x 10 inches in size,

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marked "9–281;" thence south four hundred (400) feet to corner No. 10, a quartz rock 5 x 6 x 10 inches in size, marked "10–281," from which a blazed pine tree thirteen (13) inches in diameter bears north thirty-two (32) degrees ten (10) minutes east at the distance eight and three-tenths (8.3) feet, and a pine fourteen (14) inches in diameter, blazed and marked "10–281," bears south seventy-one (71) degrees thirty-eight (38) minutes east at the distance of ten (10) feet; thence from said corner No. 10 south thirty-nine degrees fifty-six (56) minutes west seven hundred and fifty feet to corner No. 11, a quartz rock 4 x 8 x 11 inches in size, marked "11–281," from which a pine tree sixteen inches in diameter, blazed and marked "11–281," bears north sixty-two (62) degrees twelve (12) minutes east at the distance of (12) feet, and a pine tree nine (9) inches in diameter, blazed and marked "11–281," bears south fifteen degrees and twenty-one (21) minutes east at the distance of ten and eight-tenths (10.8) feet; thence from said corner No. 11 west one hundred and twenty-eight and seventy-one hundredths (128.71) feet to corner No. 12, a granite rock 5 x 7 x 11 inches in size, marked "12–281," from which a pine tree thirteen (13) inches in diameter, blazed and marked "12–281," bears south five (5) degrees thirteen (13) minutes east at the distance of sixteen and two-tenths (16.2) feet, and a pine tree eleven inches in diameter, blazed and marked "12–281," bears south fifty nine (59) degrees and eight minutes west at the distance of fourteen and eight-tenths (14.8) feet; thence from said corner No. 12 south eleven hundred sixty-four and one-tenth (1164.1) feet to corner No. 13, a granite rock 5 x 11 x 14 inches in size, from which Mount Sheridan bears south seventy-three (73) degrees thirty-six (36) minutes east, monument on Mt. Elbert bears south fifty-four (54) degrees forty-six (46) minutes west, a pine tree nine inches in diameter, blazed and marked "13–281," bears south twenty-four (24) degrees eight (8) minutes west at the distance of ten and five-tenths (10.5) feet, and a pine tree five (5) inches in diameter, blazed and marked, bears north seventy-seven (77) degrees forty-seven (47) minutes west at the distance of thirteen (13) feet; thence from said corner No. 13 west thirty-five hundred and ninety-four and sixteen hundredths (3594.16) ft. to corner No. 14, a granite rock *granite rock* 5 x 10 x 14 inches in size, marked "14–281," from which a pine tree eleven (11) inches in diameter, blazed and marked "14–281," bears north twenty-nine (29) degrees twenty-two (22) minutes east at the distance of eleven and two-tenths (11.2) feet, and a blazed pine tree twelve (12) inches in diameter, marked "14–281," bears north seventy-one (71) degrees twenty-five (25) minutes west at the distance of thirty- — (31) feet; thence from said corner No. 14 north twenty-six (26) minutes west eleven hundred and thirty-eight and sixty-nine hundredths (1138.69) feet to corner No. 15, a quartz rock 5 x 7 x 9 inches in size, marked "15–218," from which a blazed pine tree seventeen (17) inches in diameter bears north sixty-five (65) degrees fifteen (15) minutes west at the distance of eleven and one-tenth (11.1) ft.; a double pine tree, blazed and marked "15–281," bears south nineteen (19) degrees ten (10) minutes east at the distance of

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ten (10) feet; thence from said corner No. 15 east five hundred and ninety (590) feet to corner No. sixteen (16), a porphyry rock 7 x 8 x 11 inches in size, marked "16–281," the same being corner No. 3 of survey No. 236; thence north sixty-five (65) degrees fifteen (15) minutes east along the southerly boundary of said survey No. 236 five hundred and twenty-seven (527) feet to corner 17, a porphyry rock 5 x 12 x 12 inches in size, marked "17–281," the same being corner No. 1 of survey No. 259; thence south fifty (50) degrees east four hundred and seventy-two and forty-seven hundredths (472.47) feet to corner No. 18, a granite rock 3 x 8 x 14 inches in size, marked "18–281," the same being corner No. 2 of said survey No.
39 259; thence north sixty-five (65) degrees east five hundred and thirty-one and twenty-nine hundredths (539.29) feet to corner No. 19, a granite rock 5 x 5 x 15 inches in size, marked "19–281;" thence south one hundred and ninety (190) feet along the west boundary of the Oro La Plata lode to corner No. 20, a granite rock 6 x 6 x 18 inches in size, marked "20–281," from which a blazed pine tree seven (7) inches in diameter bears north nineteen (19) degrees 30 minutes east at the distance of five and five-tenths (5.5) feet, and a blazed pine tree twelve (12) inches in diameter bears south eighty (80) degrees thirty (30) minutes west at the distance of nineteen (19) feet; thence from said corner No. 20 along the south boundary of said Oro La Plata lode three hundred (300) feet to corner No. 21, a granite rock 6 x 7 x 10 inches in size, marked "21–281," from which a blazed pine tree fourteen (14) inches in diameter bears north seventy-two (72) degrees six (6) minutes east at the distance of twenty-one (21) and one-tenth feet, and a blazed pine six inches in diameter bears north thirty-five (35) degrees thirty-three (33) minutes east at the distance of twelve and eight-tenths feet; thence from said corner No. 21 north along the east boundary of Oro La Plata lode three hundred and twenty-nine and eighty-nine hundredths (329.89) feet to corner No. 22, a quartz rock 6 x 6 x 9 inches in size, marked "22–281;" thence north sixty-five (65) degrees east one hundred and fifty-two and seven-tenths (152.7) feet to corner No. 23, a lime rock marked "23–281," the same being No. 3 of said survey No. 259, from which a blazed pine tree fourteen inches in diameter bears south seventy-two (72) degrees four (4) minutes east at the distance of eleven and eight-tenths (11.8) feet, and a blazed pine tree ten (10) inches in diameter bears north sixteen (16) degrees thirty (30) minutes east at the distance of twenty-six (26) feet; thence from said corner
40 No. 23 south fifty (50) degrees east eight and sixty-six hundredths (8.66) feet to corner No. 24, a granite rock marked "24–281," the same being corner 4 of said survey No. 259, from which a blazed pine tree thirteen (13) inches in diameter bears north (1) degree twelve (12) minutes east at the distances of thirty and seven-tenths (30.7) feet; thence from said corner No. 24 north sixty-five (65) degrees fifteen (15) minutes east three hundred (300) feet to corner No. 25, a granite rock marked "25–281," the same being corner No. 5 of said survey No. 259, from which a blazed pine tree eighteen (18) in. diameter bears north eighty-nine (89) degrees twenty (20) minutes west at the distance of twelve and five-tenths (12.5) feet, and a

blazed pine tree ten inches in diameter bears south at the distance of four (4) feet; thence from said corner No. 25 north fifty (50) degrees west three hundred and ten *feet* (310) feet to corner No. 26, a granite rock 5 x 9 x 12 inches in size, marked "26–281," the same being corner No. 6 of said survey No. 259, from which a blazed pine tree sixteen (16) inches in diameter bears south ten (10) degrees thirty-one (31) minutes west at the distance of thirty-three (33) feet, and a blazed pine tree eighteen (18) inches in diameter bears south forty-five (45) degrees forty-two (42) minutes west at the distance of fifteen and two-tenths (15.2) feet; thence from said corner No. 26 south sixty-five (65) degrees west one hundred and ninety-eight and fifty-two — (198.52) feet to corner No. 27, a granite rock 7 x 9 x 11 inches in size, marked "27–281," from which a blazed pine tree fourteen (14) inches in diameter bears north nineteen degrees fifty (50) minutes east at the distance of six (6) feet, a blazed pine tree twelve (12) inches in diameter bears north seventy-two (72) degrees twenty-four (24) minutes west at the distance of twenty-seven and five-tenths (27.5) feet; thence from said corner No. 27 north four hundred and nine & eighty-five hundredths
41 (409.85) feet to corner No. 28, a porphyry rock 6 x 8 x 16 inches in size, marked "28–281," the same being corner No. 3 of survey No. 278, from which a blazed pine tree fourteen (14) inches in diameter bears north thirteen (13) degrees forty-six (46) minutes west at the distance of twenty-nine and eight-tenths (29.8) feet, and a blazed pine tree sixteen (16) inches in diameter bears south fifty-eight (58) degrees twenty-seven (27) minutes east at the distance of eighteen (18) feet; thence from said corner No. 28 south forty (40) degrees east fifteen hundred (1500) feet to corner No. 28, the same being corner No. 4 of said survey No. 278, from which a blazed pine tree — (16) inches in diameter bears south seventy-one (71) degrees thirty-two (32) minutes west at the distance of nineteen (19) and three-tenths feet, and a blazed pine tree sixteen (16) inches in diameter bears north twenty-two (22) degrees twenty-five (25) minutes east at the distance of five and seven-tenths ($5\frac{7}{10}$) feet; thence from said corner No. 29 north four hundred and sixty-six and five-tenths (466.5) feet to corner No. thirty (30), a porphyry rock 4 x 8 x 14 inches in size, marked "30–281," the same being corner No. 5 of said survey No. 278, from which a blazed pine tree twenty (20) inches in diameter bears north eighty-seven (87) degrees twenty-five (25) minutes west at the distance of seventeen and seven-tenths (17.7) feet, and a blazed pine tree twelve inches in diameter bears north fifty (50) degrees ten minutes east at the distance of twenty-nine (29) feet; thence from said corner No. thirty (30) north forty (40) degrees west eight hundred and fifty-two and sixty-five hundredths (852.65) feet to corner No. 31, a porphyry rock 8 x 8 x 12 inches in size, marked "31–281," from which a blazed pine tree eleven inches in diameter bears north fifty-seven (57) degrees thirty-one (31) minutes east at the distance of seventeen (17) feet, and a blazed pine
42 tree fourteen inches in diameter bears north forty-two (42) degrees sixteen (16) minutes west at the distance of twelve

and two-tenths (12.2) feet; thence from said corner No. 31 north eighteen (18) degrees west seven hundred and seventy-two and twenty-five hundredths (772.25) feet to corner No. 32, a porphyry rock 7 x 8 x 15 inches in size, marked "32–281;" thence north forty-six (46) degrees east eight hundred and twenty (822) feet to corner No. 33, a porphyry rock 3 x 6 x 18 inches in size, marked "33–281;" thence east one hundred and eighty-nine and twenty-nine hundredths feet to corner No. 34, a porphyry rock 3 x 4 x 8 inches in size, marked "34–281," from which a blazed pine tree eighteen — in diameter bears north thirty-three (33) degrees thirty (30) minutes east at the distance of four (4) feet; thence from said corner No. thirty-— (34) north three hundred and twenty-four and ninety-five hundredths (324.95) feet to south bank of California gulch, four hundred and nine and ninety-five one-hundredths (409.95) feet to north bank of said gulch, four hundred and sixty-four and ninety-five hundredths (464.95) feet to county road, from — four hundred and seventy-four and ninety-five — (474.95) feet to the place of beginning, to wit:

Beginning at cor. No. 1, same as corner No. 4, Brooklyn lode, thence S. eighteen degrees 10 minutes E. 750 ft. to west side center stake, 1,500 feet to corner No. 2, same as corner No. 3, Brooklyn lode, whence mon. on Mt. Elbert b'rs S. 53 degrees W., South Twin Peak b'rs S. sixty degrees 14 minutes W., pine stump 14" dia. b'rs No. 62 degrees 50 minutes West 8.9 ft., pine stump 26" dia. b'rs S. 51 degrees W. 14.2 feet, cor. 30–281 b'rs S. 31 degrees .06 minutes E. 12.6 ft.; thence N. 71 degrees 50 minutes E. 245.5 ft. to cor. No. 3; thence No. 18 degrees 10 minutes W. 750 ft. to E. side center stake, 1,500 ft. to cor. No. 4, whence Mt. Elbert b'rs S. 51 de-
43 grees 30 minutes W., p'k, name unknown, b'rs S. 45 degrees 15 minutes W., pine stump 18" dia. b'rs N. 40 degrees 20 minutes E. 44.5 ft., pine stump 15 inches in dia. b'rs S. 38 degrees 35 minutes E. 15.4 ft.; thence S. 71 degrees 50 minutes W. 245.5 ft. to cor. 1, the place of beginning, being about ten acres of the premises herein first above described and near the east boundary line thereof, and that it have a writ of possession therefor.

It is further considered by the court that the said plaintiff do have and recover of and from the said defendants its costs by it in this behalf laid out and expended, to be taxed, and have execution therefor."

As by the said inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and eighty-three, the said cause came on to be heard before the said Supreme Court on the said transcript of record and was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that the

said defendants recover against the said plaintiff, The Iron Silver Mining Company, for their costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with liberty to either party to move in that court to amend the pleadings, and
44 for further proceedings not inconsistent with the opinion of this court.

17TH DECEMBER, 1883.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the eleventh day of February, in the year of our Lord one thousand eight hundred and eighty-four.

(S'g'd) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Costs of defendants:

Clerk ---------- $—.
Attorney ---------- —.

Paid by plaintiff.

(Endorsed:) 1138. No. 1006. October term, 1883. Mandate Supreme Court United States. J. L. Sullivan *et al. vs.* Iron Siver Mining Co. Filed Feb. 27, 1884. (S'g'd) Edward F. Bishop, clerk.

And afterwards and on, to wit, the 17th day of April, A. D. 1884, came again the said plaintiff, by G. G. Symes, Esq., its attorney, and filed in said court and in said cause its replication to the amended answer heretofore filed herein.

And the said replication is in words and figures as follows, to wit:

45 *Replication.*

In the Circuit Court of the United States for the District of Colorado, in the Eighth Circuit.

THE IRON SILVER MINING COMPANY
vs.
J. L. SULLIVAN *et al.*

Now comes the said plaintiff Co., and for reply to the amended answer of said defendants herein—

Denies that at the time of the location of the said placer claim or at the time of the survey thereof, or at the time of the application for the said placer patent, or at the time of the entry of said land, or at the time of the issuing or granting of the said patent there was a

lode, vein, or deposit of mineral in rock in place carrying any carbonates of lead or any silver *or* of great or any value that was known to exist or was claimed to exist within the boundaries or underneath the surface of the said patented premises; and denies that any vein, lode, or mineral deposit of rock in place of any kind or character was claimed to exist or was known to exist within the said premises by the said patentees in the said placer patent or by any other person or persons at the times in the said amended answer mentioned or at any time before the said application or entry or issuing of the said placer patent.

Denies that any vein or lode or ledge or valuable mineral
46 deposit of rock in place of any kind or character was excluded or expressly or otherwise excepted from the said patent or from said grant of the said premises in or by the said patent.

Denies that the said Wells and Moyer, patentees as aforesaid and grantors of plaintiff, made application for said patent or acquired the same for the purpose of obtaining title to any vein, lode, ledge, or valuable mineral deposit of rock in place; and denies that the work done upon the said premises by the plaintiff Co. or its grantors was done on deposits of rock in place; and denies that no work has been done on any placer deposit within the boundaries of said patented premises.

And the plaintiff Co. admits that on the 1st day of January, 1882, the said defendant went upon the said patented premises and sank a shaft thereon, but denies that they discovered or uncovered or exposed any vein, lode, or ledge or valuable mineral deposit of rock in place of any kind whatever; and admits that said defendants did attempt to locate a pretended lode claim within the boundaries of the said patented premises, but denies that they acquired or could acquire any right or title of any kind whatever by any such pretended location of a lode mining claim upon or within the said patented premises, and alleges that defendants are naked trespassers upon the said premises.

And the plaintiff Co. avers that the said Thomas S. Well and William Moyer, grantors and predecessors in interest of the plaintiff Co., on the 16th day of May, A. D. 1878, in pursuance of the provisions of the act of Congress in such case, duly made application to
47 the United States Land Office to enter and pay for said premises described in the said complaint, and such proceedings were thereafter had in accordance with the act of Congress in such case made and provided that on the 22nd day of July, A. D. 1878, the said Wells and Moyer did enter and pay for the said mineral land and premises, and did receive a duplicate receiver's receipt therefor; and such further proceedings were duly had that thereafter and on the 11th day of March, A. D. 1879, a United States patent was duly issued by the United States to the said Wells and Moyer for the said premises.

And the plaintiff Co., for further and second reply to the said amended answer, alleges that at the time of the application for the said placer patent in the said amended answer set forth, and at the time of the entry and purchase of the said placer premises, and at

the time of the issuing of the said placer patent, no lode mining claim of any kind or character had been discovered, located, or recorded or initiated within the exterior boundaries of the said placer premises by the said defendants or by any of their grantors or predecessors in interest.

And the plaintiff company, for a further and third reply to the said amended answer, alleges that at the time of the application for the placer patent in the said amended answer set forth, and at the time of the entry and purchase of the said placer premises, and at the time of the issuing of the said placer patent, no lode mining claim of any kind or character had been discovered, located, recorded, or initiated within the exterior boundaries of the said placer claim and premises by the said plaintiff company or any of its grantors or predecessors in interest, or by any person or persons whomsoever.

48 And the plaintiff Co., for a further and fourth reply, avers that no top, outcrop, or apex of any lode, vein, ledge, or mineral deposit of rock in place of any kind or character has ever been discovered or exposed, or cut or reached, by the said defendants or by their grantors or predecessors in interest, or by any other person or persons, within the boundaries of the said pretended lode mining claim of the defendants, and no top, outcrop, or apex of any lode or vein or mineral deposit of rock in place was ever known to exist within the said pretended lode mining claim.

Wherefore plaintiff Co. prays judgment as it has by its said complaint heretofore prayed.

(S'g'd) G. G. SYMES,
Att'y for Pl'ff Co.

(Endorsed:) No. 1138. In U. S. circuit court. The Iron Silver Mining Co. *vs.* J. L. Sullivan *et al.* Replication. Filed Apr. 17, 1884. (S'g'd) Edward F. Bishop, clerk. G. G. Symes, att'y for pl'ff Co.

And afterwards and on, to wit, the 13th day of October, A. D. 1884, the same being one of the regular juridical days of the October term, A. D. 1884, of said court—present, the Honorable David J. Brewer, circuit judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Jury Trial. Finding for Plaintiff.

49 THE IRON SILVER MINING COMPANY *vs.* J. L. SULLIVAN *et al.* } 1138. For Possession of a Specific Property and for Damages.

At this day comes the said plaintiff, by G. G. Symes, Esquire, its attorney, and the said defendants, by V. D. Markham, Esquire, their attorney, also come.

And thereupon comes a jury, to wit:

1, Wm. H. Hulett; 2, Christopher C. Gird; 3, Robert Cann; 4, Henry Fair; 5, James R. Hicks; 6, Frank T. Johnson; 7, Will. G. Hutchinson; 8, Lyman C. Blood; 9, John Stromberg; 10, Absalom Blett; 11, W. H. Avery; 12, John P. Maxwell, twelve good and lawful men, and they are duly selected and tried, impannelled and sworn to well and truly try the issues herein joined and a true verdict render according to the evidence.

And the said jurors, having heard the evidence produced herein and the instructions of the court, on their oaths do say they find for the plaintiff, and that it is the owner and seized in fee of the tract of land sued for and particularly described in the complaint in this action, and entitled to the immediate possession thereof.

Wherefore, on motion of the said plaintiff, it is ordered by the court that judgment be entered herein upon the verdict of the jury in favor of the said plaintiff and against the said defendant for the possession of the premises as in its complaint herein described, and for the said plaintiff's costs, to be taxed.

50 And thereupon and on the same day, to wit, the 13th day of October, A. D. 1884, judgment was duly entered against the said defendants in the judgment book of said court, in pursuance of the statutes and rules of court.

And the said judgment is in words and figures as follows, to wit:

Judgment.

THE IRON SILVER MINING COMPANY *vs.* J. L. SULLIVAN, JOHN RYAN, PHILLIP HARRINGTON, TIMOTHY CARROLL, RICHARD FOLEY, K. C. FISHER, M. J. STEWART, TIMOTHY SANTRY, C. J. O'LAUGHLIN, and P. J. McNULTY.	Action for Possession of Specific Real Property and for Damages.

On this 13th day of October, A. D. 1884, the same being one of the regular juridical days of the October term, A. D. 1884, of said court, there being present the Honorable David J. Brewer, circuit judge—

It is considered by the court that the said plaintiff do have and recover of and from the said defendants possession of the premises, lands, and tenements in said complaint mentioned, to wit: Parcel of the Wells and Moyer placer claim, in California mining district, county of Lake, and State of Colorado, more fully described by *meets* and bounds as follows, to wit: Beginning at cor. No. 1, same as corner No. 4, Brooklyn lode, thence S. eighteen degrees 10 minutes E.

750 feet to west side center stake, 1,500 feet to corner No. 2,

51 same as corner No. 3, Brooklyn lode, whence mon. on Mt. Elbert b'rs S. 53 degrees W., South Twin Peak b'rs S. sixty degrees 14 minutes W., pine stump 14″ dia. b'rs N. 62 degrees 50 minutes west 8.9 ft., pine stump 26 dia. b'rs. S. 51 degrees W. 14.2 feet, cor. 30–281 b'rs S. 31 degrees 6 minutes E. 12.6 ft.; thence N.

71 degrees 50 minutes E. 245.5 ft. to cor. No. 3; thence No. 18 degrees 10 minutes W. 750 ft. to E. side center stake, 1,500 ft. to cor. No. 4, whence Mt. Elbert b'rs S. 51 degrees 30 minutes W., pk., name unknown, b'rs S. 45 degrees 15 minutes W., pine stump 13" dia. b'rs N. 40 degrees 20 minutes E. 44.5 ft., pine stump 15 inches in dia. b'rs S. 38 degrees 35 minutes E. 15.4 ft.; thence S. 71 degrees 50 minutes W. 245.5 ft. to cor. 1, the place — *be* beginning, being about ten acres, and that it have a writ of possession therefor.

It is further considered by the court that the said plaintiff do have and recover of and from the said defendants its costs by it in this behalf laid out and expended, to be taxed, and have execution therefor.

And afterwards and on, to wit, the 16th day of November, A. D. 1885, the same being one of the regular juridical days of the October term, A. D. 1885, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Jury Trial.

52 THE IRON SILVER MINING COMPANY *vs.* J. L. SULLIVAN, JOHN RYAN, *et al.* } 1138. Action for Possession of Specific Real Property and for Damages.

At this day comes the said plaintiff, by G. G. Symes, Esq., its attorney, and the said defendants, by C. S. Thomas, Esq., their attorney, also come.

And thereupon comes a jury, to wit: 1, D. S. Coffman; 2, J. W. Denio; 3, John H. Jones; 4, Charles E. Day; 5, Silas S. Kennedy; 6, James R. Ives; 7, Harry Williams; 8, Daniel M. Ostrander; 9, Paul H. Jones; 10, J. J. Boyd; 11, John F. Porter; 12, A. G. Breen, twelve good and lawful men, and they are duly selected and tried, impaneled and sworn to well and truly try the issues herein joined and a true verdict render according to the evidence; and thereupon comes the evidence, the hearing of which is continued to the hour of adjournment.

And the said jurors, being each duly cautioned by the court not to converse among themselves or with others touching this cause or the matters at issue herein or the evidence heard or any part thereof, nor to listen to such conversation of others, are permitted to separate, to meet the court at its next incoming.

And afterwards and on, to wit, the 17th day of November, A. D. 1885, the same being one of the regular juridical days of the October term, A. D. 1885, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

53 *Order. Finding for Plaintiff and for Judgment.*

THE IRON SILVER MINING COMPANY } 1138. Action for Possession
vs. } of Specific Real Property
J. L. SULLIVAN, JOHN RYAN, *et al.* } and for Damages.

At this day come again the said parties, by their attorneys respectively; and thereupon the said plaintiff saith it will no further prosecute his claim for damages in this cause against the said defendants.

And the said jurors, having heard the evidence produced herein and the instructions of the court, upon their oaths do say they find for the said plaintiff, and that the said plaintiff is the owner and seized in fee and entitled to the possession of the premises called the Kit Carson lode claim, within the exterior boundaries of the Wells and Moyer placer claim seized and owned by the said plaintiff; which land and premises is particularly described by metes and bounds as follows, to wit: Beginning at corner No. 1, same as corner No. 4, Brooklyn lode, thence south 18 degrees 10 minutes east 750 feet to west side center stake, 1,500 feet to corner No. 2, same as corner No. 3, Brooklyn lode, whence monument on Mt. Elbert bears south 53 degrees west, South Twin Peak bears south 60 degrees 14 minutes west, pine stump 14 inches diameter bears north 62 degrees 50 minutes west 8.9 feet, pine stump 26 inches in diameter bears south 51 degrees west 14.2 feet, corner 30–281 bears south 31 degrees 6 minutes east 12.6 feet; thence north 71 degrees 50 minutes east 245.5 feet to corner No. 3; thence north 18 degrees 10 minutes west 750 feet to east side of center stake, 1,500 feet to corner No. 4, whence
54 Mt. Elbert bears south 51 degrees 30 minutes west, peak, name unknown, bears south 45 degrees 15 minutes west, pine stump 13 inches in diameter bears north 40 degrees 20 minutes east 44.5 feet, pine stump 15 inches in diameter bears south 38 degrees 35 minutes east 15.4 feet; thence south 71 degrees 50 minutes west 245.5 feet to corner No. 1, the place of beginning.

Wherefore, on motion of the said plaintiff, it is ordered by the court that judgment be entered herein in favor of the said plaintiff and against the said defendants for the possession of the premises as aforesaid and the said plaintiff's costs, to be taxed.

And thereupon and on the same day, to wit, the 17th day of November, A. D. 1885, judgment was duly entered against the said defendants in the judgment book of said court, in pursuance of the statutes and rules of court, and the said judgment is in words and figures as follows, to wit:

Judgment.

THE IRON SILVER MINING COMPANY *vs.* J. L. SULLIVAN, JOHN RYAN, PHILLIP Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, N. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty.	1138. Action for Possession of Specific Real Property and for Damages.

On this 17th day of November, A. D. 1885, the same being
55 one of the regular juridical days of the October term, A. D. 1885, of said court, there being present the Honorable Moses Hallett, district judge—

It is considered by the court that the said plaintiff do have and recover of and from the said defendants possession of the property, lands, and tenements in controversy herein and as described in the verdict of the jury herein, to wit: The premises called the Kit Carson lode claim, within the exterior boundaries of the Wells and Moyer placer claim, seized and owned by the said plaintiff, which land and premises is particularly described by metes and bounds as follows, to wit: Beginning at corner No. 1, same as corner No. 4, Brooklyn lode, thence south 18 degrees 10 minutes east 750 feet to west side center stake, 1,500 feet to corner No 2, same as corner No. 3, Brooklyn lode, whence monument on Mt. Elbert bears south 53 degrees west, South Twin Peak bears south 60 degrees 14 minutes west, pine stump 14 inches diameter bears north 62 degrees 50 minutes west 8.9 feet, pine stump 26 inches in diameter bears south 51 degrees west 14.2 feet, corner 30–281 bears south 31 degrees 6 minutes east 12.6 feet; thence north 71 degrees 50 minutes east 245.5 feet to corner No. 3; thence north 18 degrees 10 minutes west 750 feet to east side of center stake, 1,500 feet to corner No. 4, whence Mt. Elbert bears south 51 degrees 30 minutes west, peak, name unknown, bears south 45 degrees 15 minutes west, pine stump 13 inches in diameter bears north 40 degrees 20 minutes east 44.5 feet, pine stump 15 inches in diameter bears south 38 degrees 35 minutes east, 15.4 feet; thence south 71 degrees 50 minutes west 245.5 feet to corner No. 1, the place of beginning, situate in California
56 mining district, county of Lake, and State of Colorado, and that it have a writ of possession therefor.

It is further considered by the court that the said plaintiff do have and recover of and from the said defendants its costs by it in this behalf laid out and expended, to be taxed, and have execution therefor.

And afterwards and on, to wit, the 18th day of November, A. D. 1885, came again the said defendants, by Messrs. Patterson & Thomas, James B. Belford, and Clinton Reed, their attorneys, and filed in said court and in said cause their motion for a new trial of the issues herein joined.

And the said motion for new trial is in words and figures as follows, to wit:

Motion for New Trial.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the Eighth Judicial Circuit in and for said District.

THE IRON SILVER MINING COMPANY }
v.
JOHN L. SULLIVAN *et al.* }

The defendants, by Patterson & Thomas, James B. Belford, and Clinton Reed, their attorneys, now come and move the court to set aside the verdict of the jury in the above-entitled cause and
57 to grant them a new trial of the issues herein joined, because—
First. The verdict is contrary to the evidence.
Second. The verdict is contrary to law.
Third. The court erred in instructing the jury to find against the defendants and to bring in a verdict for the plaintiff.
Fourth. The court erred in excluding proper evidence offered by the defendants for the consideration of the jury, and for other good and sufficient reasons.

(S'g'd) By PATTERSON & THOMAS,
J. B. BELFORD,
CLINTON REED,
Att'ys for Def'ts.

(Endorsed:) 1138. The Iron Silver Mining Co. *vs.* Jno. L. Sullivan *et al.* Motion for new trial. Filed Nov. 18, 1885. (S'g'd) Edward F. Bishop, clerk. Patterson & Thomas, att'ys for def'ts.

And afterwards and on, to wit, the 21st day of November, A. D. 1885, the same being one of the regular juridical days of the October term, A. D. 1885, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Motion for New Trial Denied. 60 Days to File Bill of Exceptions.

THE IRON SILVER MINING COMPANY } 1138. Action for Possession of
vs. Specific Real Property and
J. L. SULLIVAN *et al.* for Damages.

58 At this day comes the said plaintiff, by G. G. Symes, Esq., its attorney, and said defendants, by C. S. Thomas, Esq., their attorney, also come.
And the motion of the said defendants for a new trial of the issues

herein joined, coming on now to be heard, is submitted to the court, and the court being now sufficiently advised in the premises, it is ordered by the court, for good and sufficient reasons to the court appearing, that the said motion be denied.

And thereupon, on motion of the said defendants, it is ordered that the said defendants have day until sixty (60) days from this day to file herein their bill of the exceptions reserved by them upon the trial of the issues herein joined. It is further ordered that the bond upon writ of error herein shall be in the sum of one thousand dollars ($1,000.00).

And afterwards and on, to wit, the 30th day of December, A. D. 1885, the same being one of the regular juridical days of the October term, A. D. 1885, of said court—present, the Honorable Moses Hallett, district judge—the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. 60 Days to File Bill of Exceptions.

THE IRON SILVER MINING COMPANY } 1138. Action for Possession
vs. } of Specific Real Property
J. L. SULLIVAN *et al.* } and for Damages.

59 At this day come the said defendants, by C. S. Thomas, Esq., their attorney, and thereupon, on motion of the said defendants, and for good and sufficient reasons to the court appearing, it is ordered by the court that day until the first day of March, A. D. 1886, be allowed the said defendants to file herein their bill of the exceptions reserved by them upon the trial of the issues herein joined.

And afterwards and on, to wit, the 19th day of February, A. D. 1886, came again the said defendants, by Messrs. Patterson & Thomas, their attorneys, and filed in said court and in said cause their bill of the exceptions reserved by them upon the trial of the issues herein joined; and the said bill of exceptions is in words and figures as follows, to wit:

Bill of Exceptions.

UNITED STATES OF AMERICA, }
District of Colorado. }

In the Circuit Court of the United States for the District of Colorado, in the Eighth Judicial Circuit, at the General Term Thereof, Begun and Holden in the City of Denver, in said District, on the First Tuesday of October, A. D. 1885.

Present: Hon. Moses Hallett, district judge, presiding.

THE IRON SILVER MINING COMPANY, Plaintiff, }
vs. }
60 JOHN L. SULLIVAN *et al.*, Defendants. }

Be it remembered that on the trial of this cause during the gen-

eral term of this court, to wit, on the 16th day of November, A. D. 1885, a jury having been duly empanelled and sworn, the plaintiff, to maintain the issues on its part, gave in evidence as follows—that is to say:

Plaintiff, by its counsel, offered in evidence a patent from the United States to Thomas S. Wells and William Moyer, dated March 11th, 1879, which was admitted without objection and was marked Plaintiff's Exhibit "A," and is in words and figures following to wit:

General Land Office No., 3098. Mineral certificate No. 155.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the placer mining claim of Thomas S. Wells and Wm. Moyer, accompanied by the certificate of the register of the land office at Fair Play, in the State of Colorado, whereby it appears that, in pursuance of the said Revised Statutes of the United States, the said Thomas S. Wells and Wm. Moyer did, on the twenty-second day of July, A. D. 1878, enter and pay for said claim or premises, being mineral entry No. 155 in the series of said office designated by the surveyor general as lot No. 281, embracing a portion of the unsurveyed public domain in the Cali-
61 fornia mining district, in the county of Lake and State of California, in the district of lands subject to sale at Fair Play, containing one hundred and ninety-three (193) acres and forty-three hundredths ($\frac{43}{100}$) of an acre of land, more or less, and according to the returns on file in the general land office bounded, described, and platted as follows, with magnetic variation at fifteen (15) degrees east, to wit: Beginning at corner No. 1, a porphyry rock 5 x 5 x 9 inches in size, marked "1–281," from which U. S. locating monument No. 1 bears north seventy-three (73) degrees one (1) minute and thirty-six (36) seconds west at the distance of ten thousand eight hundred and seventy and sixty-three hundredths ($10{,}870\frac{63}{100}$) feet and the peak of Bald Mountain bears south sixty-five (65) degrees thirty-five (35) minutes east; thence from said corner No. 1 south seventy-nine (79) degrees twenty-eight (28) minutes east five hundred and ninety and five-tenths ($590\frac{5}{10}$) feet to corner No. 2, a porphyry rock 5 x 7 x 12 inches in size, marked "2–281;" thence south fifty-eight (58) degrees eight (8) minutes east four hundred and thirty-six (436) feet to road, seven hundred and twenty-one (721) feet to corner No. 3, a granite rock 5 x 7 x 13 inches in size, marked "3–281;" thence south twenty-five (25) degrees four (4) minutes east sixty-eight (68) feet to corner No. 4, a granite rock 7 x 8 x 8 inches in size, marked "4–281;" thence south sixty-six (66) degrees eight (8) minutes east seven hundred and thirty-eight (738) feet to corner No. 5, a granite rock 7 x 11 x 13 inches in size, marked "5–281;" thence south twenty-nine (29) degrees forty-eight (48)

minutes west twenty (20) feet to north bank of California gulch, fifty six (56) feet to stream, ninety (90) feet to south bank of California gulch, one hundred and thirty-three (133) feet to corner No. 6, a quartz rock 8 x 11 x 12 inches in size, marked "6–281;"
62 thence north seventy-two (72) degrees fifty (50) minutes west two hundred and fifty (250) feet to corner No. 7, a quartz rock 6 x 8 x 12 inches in size, marked "7–281;" thence south twenty (20) degrees forty-eight (48) minutes west two hundred and forty (240) feet to north bank of Eureka gulch, five hundred and fifty (550) feet to south bank of said gulch, eight hundred and forty-five (845) feet to corner No. 8, a porphyry rock 7 x 9 x 12 inches in size, marked "8–281;" thence south seventy-two (72) degrees eight (8) minutes west two hundred (200) feet to corner No. 9, a porphyry rock 5 x 7 x 10 inches in size, marked "9–281;" thence south four hundred (400) feet to corner No. 10, a quartz rock 5 x 6 x 10 inches in size, marked "10–281," from which a blazed pine tree thirteen (13) inches in diameter bears north thirty-two (32) degrees ten (10) minutes east at the distance of eight and three-tenths ($8\frac{3}{10}$) feet and a pine fourteen (14) inches in diameter, blazed and marked "10–281," bears south seventy-one (71) degrees thirty-eight (38) minutes east at the distance of ten (10) feet; thence from said corner No. 10 south thirty-nine (39) degrees fifty-six (56) minutes west seven hundred and fifty (750) feet to corner No. 11, a quartz rock 4 x 8 x 11 inches in size, marked "11–281," from which a pine tree sixteen (16) inches in diameter, blazed and marked "11–281," bears north sixty-two (62) degrees twelve (12) minutes east at the distance of twelve (12) feet and a pine tree nine (9) inches in diameter, blazed and marked "11–281," bears south fifteen (15) degrees twenty-one (21) minutes east at the distance of ten and eight-tenths ($10\frac{8}{10}$) feet; thence from said corner No. 11 west one hundred and twenty-eight and seventy-one hundredths ($128\frac{71}{100}$) feet to corner No. 12, a granite rock 5 x 7 x 11 inches in size, marked "12–281," from which a pine tree thirteen (13) inches in diameter, blazed and marked
"12–281," bears south five (5) degrees thirteen (13) min-
63 utes east at the distance of sixteen and two-tenths ($16\frac{2}{10}$) feet and a pine tree eleven (11) inches in diameter, blazed and marked "12–281," bears south fifty-nine (59) degrees eight (8) minutes west at the distance of fourteen and eight-tenths ($14\frac{8}{10}$) feet; thence from said corner No. 12 south eleven hundred and sixty-four and one-tenth ($1164\frac{1}{10}$) feet to corner No. 13, a granite rock 5 x 11 x 14 inches in size, from which Mt. Sheridan bears south seventy-three (73) degrees thirty-six (36) minutes east, monument on Mt. Elbert bears south fifty-four (54) degrees forty-six (46) minutes west, a pine tree nine (9) inches in diameter, blazed and marked "13–281," bears south twenty-four (24) degrees eight (8) minutes west at the distance of ten and five-tenths ($10\frac{5}{10}$) feet and a pine tree five (5) inches in diameter, blazed and marked, bears north seventy-seven (77) degrees forty-seven (47) minutes west at the distance of thirteen (13) feet; thence from said corner No. 13 west thirty-five hundred and ninety-four and sixteen-hundredths ($3594\frac{16}{100}$) feet to corner No. 14, a granite rock 5 x 10 x 14 inches in size, marked "14–281," from which

a pine tree eleven (11) inches in diameter, blazed and marked "14–281," bears north twenty-nine (29) degrees twenty-two (22) minutes east at the distance of eleven and two-tenths ($11\frac{2}{10}$) feet and a blazed pine tree twelve (12) inches in diameter, marked "14–281," bears north seventy-one (71) degrees twenty-five (25) minutes west at the distance of thirty-one (31) feet; thence from said corner No. 14 north twenty-six (26) minutes west eleven hundred and thirty-eight and sixty-nine hundredths ($1138\frac{69}{100}$) feet to corner No. 15, a quartz rock 5 x 7 x 9 inches in size, marked "15–218," from which a blazed pine tree seventeen (17) inches in diameter bears
64 north sixty-five (65) degrees fifteen (15) minutes west at the distance of eleven and one-tenth ($11\frac{1}{10}$) feet, a double pine tree, blazed and marked "15–281," bears south nineteen (19) degrees ten (10) minutes east at the distance of ten (10) feet; thence from said corner No. 15 east five hundred and ninety (590) feet to corner No. 16, a porphyry rock 7 x 8 x 11 inches in size, marked "16–281," the same being corner No. 3 of survey No. 236; thence north sixty-five (65) degrees fifteen (15) minutes east along the southerly boundary of said survey No. 236 five hundred and twenty-seven (527) feet to corner No. 17, a porphyry rock 5 x 12 x 12 inches in size, marked "17–281," the same being corner No. 1 of survey No. 259; thence south fifty (50) degrees east four hundred and seventy-two and forty-seven hundredths ($472\frac{47}{100}$) feet to corner No. 18, a granite rock 3 x 8 x 14 inches in size, marked "18–281," the same being corner No. 2 of said survey No. 259; thence north sixty-five (65) degrees east five hundred and thirty-one and twenty-nine hundredths ($531\frac{29}{100}$) feet to corner No. 19, a granite rock 5 x 5 x 15 inches in size, marked "19–281;" thence south one hundred and ninety (190) feet along the west boundary of the Oro La Plata lode to corner No. 20, a granite rock 6 x 6 x 18 inches in size, marked "20–281," from which a blazed pine tree seven (7) inches in diameter bears north nineteen (19) degrees thirty (30) minutes east at the distance of five and five-tenths ($5\frac{5}{10}$) feet and a blazed pine tree twelve (12) inches in diameter bears south eighty (80) degrees thirty (30) minutes west at the distance of nineteen (19) feet; thence from said corner No. 20 east along the south boundary of said Oro La Plata lode three hundred (300) feet to corner No. 21, a granite rock 6 x 7 x 10 inches in size, marked "21–281," from which a blazed pine tree fourteen (14) inches in diameter bears north seventy-two (72) degrees six (6) minutes east at
65 the distance of twenty-one and one-tenth ($21\frac{1}{10}$) feet and a blazed pine six (6) inches in diameter bears north thirty-five (35) degrees thirty-three (33) minutes east at the distance of twelve and eight-tenths ($12\frac{8}{10}$) feet; thence from said corner No. 21 north along the east boundary of said Oro La Plata lode three hundred and twenty-nine and eighty-nine hundredths ($329\frac{89}{100}$) feet to corner No. 22, a quartz rock 6 x 6 x 9 inches in size, marked "22–281;" thence north sixty-five (65) degrees east one hundred and fifty-two and seven-tenths ($152\frac{7}{10}$) feet to corner No. 23, a lime rock marked "23–281," the same being corner No. 300 — said survey No. 259, from which a blazed pine tree fourteen (14) inches in diameter bears south sev-

enty-two (72) degrees four (4) minutes east at the distance of eleven and eight-tenths ($11\frac{8}{10}$) feet and a blazed pine tree ten (10) inches in diameter bears north sixteen (16) degrees thirty (30) minutes east at the distance of twenty-six (26) feet; thence from said corner No. 23 south fifty (50) degrees east eight and sixty-six hundredths ($8\frac{66}{100}$) feet to corner No. 24, a granite rock marked "24–281," the same being corner No. 4 of said survey No. 259, from which a blazed pine tree thirteen (13) inches in diameter bears north one (1) degree twelve (12) minutes east at the distance of thirty and seven-tenths ($30\frac{7}{10}$) feet; thence from said corner No. 24 north sixty-five (65) degrees fifteen (15) minutes east three hundred (300) feet to corner No. 25, a granite rock marked "25–281," the same being corner No. 5 of said survey No. 259, from which a blazed pine tree eighteen (18) inches in diameter bears north eighty-nine (89) degrees twenty (20) minutes west at the distance of twelve and five-tenths ($12\frac{5}{10}$) feet and a blazed pine tree ten inches in diameter bears south at the distance of four (4) feet;
66 thence from said corner No. 25 north fifty (50) degrees west three hundred and ten (310) feet to corner No. 26, a granite rock 5 x 9 x 12 inches in size, marked "26–281," the same being corner No. 6 of said survey No. 259, from which a blazed pine tree sixteen (16) inches in diameter bears south ten (10) degrees thirty-one (31) minutes west at the distance of thirty-three (33) feet and a blazed pine tree eighteen (18) inches in diameter bears south forty-five (45) degrees forty-two (42) minutes west at the distance of fifteen and two-tenths ($15\frac{2}{10}$) feet; thence from said corner No. 26 south sixty-five (65) degrees west one hundred and ninety-eight and fifty-two hundredths ($198\frac{52}{100}$) feet to corner No. 27, a granite rock 7 x 9 x 11 inches in size, marked "27–281," from which a blazed pine tree fourteen (14) inches in diameter bears north nineteen (19) degrees fifty (50) minutes east at the distance of six (6) feet; a blazed pine tree twelve (12) inches in diameter bears north seventy-two (72) degrees twenty-four (24) minutes west at the distance of twenty-seven and five-tenths ($27\frac{5}{10}$) feet; thence from said corner No. 27 north four hundred and nine and eighty-five hundredths ($409\frac{85}{100}$) feet to corner No. 28, a porphyry rock 6 x 8 x 16 inches in size, marked "28–281," the same being corner No. 3 of survey No. 278, from which a blazed pine tree fourteen (14) inches in diameter bears north thirteen (13) degrees forty-six (46) minutes west at the distance of twenty-nine and eight-tenths ($29\frac{8}{10}$) feet and a blazed pine tree sixteen (16) inches in diameter bears south fifty-eight (58) degrees twenty-seven (27) minutes east at the distance of eighteen (18) feet; thence from said corner No. 28 south forty (40) degrees east fifteen hundred (1500) feet to corner No.
67 29, the same being corner No. 4 of said survey No. 278, from which a blazed pine tree sixteen (16) inches in diameter bears south seventy-one (71) degrees thirty-two (32) minutes west at the distance of nineteen and three-tenths ($19\frac{3}{10}$) feet and a blazed pine tree sixteen (16) inches in diameter bears north twenty-two (22) degrees twenty-five (25) minutes east at the distance of five and seven-tenths ($5\frac{7}{10}$) feet; thence from said corner No. 29 north four hundred and sixty-six and five-tenths ($466\frac{5}{10}$) feet to

corner No. 30, a porphyry rock 4 x 8 x 14 inches in size, marked "30–281," the same being corner No. 5 of said survey No. 278, from which a blazed pine tree twenty (20) inches in diameter bears north eighty-seven (87) degrees twenty-five (25) minutes west at the distance of seventeen and seven-tenths ($17\frac{7}{100}$) feet and a blazed pine tree twelve (12) inches in diameter bears north fifty (50) degrees ten (10) minutes east at the distance of twenty-nine (29) feet; thence from said corner No. thirty north forty (40) degrees west eight hundred and fifty-two and sixty-five hundredths ($852\frac{65}{100}$) feet to corner No. 31, a porphyry rock 8 x 8 x 12 inches in size, marked "31–281," from which a blazed pine tree eleven (11) inches in diameter bears north fifty-seven (57) degrees thirty-one (31) minutes east at the distance of seventeen (17) feet and a blazed pine tree fourteen (14) inches in diameter bears north forty-two (42) degrees sixteen (16) minutes west at the distance of twelve and two-tenths ($12\frac{2}{100}$) feet; thence from said corner No. 31 north eighteen (18) degrees west seven hundred and seventy-two and twenty-five hundredths ($772\frac{25}{100}$) feet to corner No. 32, a porphyry rock 7 x 8 x 15 inches in size, marked "32–281;" thence north forty-six (46) degrees east eight hundred and twenty-two (822) feet to corner No. 33, a porphyry rock 3 x 6 x 18 inches in size, marked "33–281;" thence east one hundred and eighty-nine and twenty-nine hundredths ($89\frac{29}{100}$) feet to corner No. 34, a porphyry rock 3 x
68 4 x 8 inches in size, marked "34–281," from which a blazed pine tree eighteen (18) inches in diameter bears north thirty-three (33) degrees thirty (30) minutes east at the distance of four (4) feet; thence from said corner No. 34 north three hundred and twenty-four and ninety-five hundredths (324.95) feet to south bank of California gulch, three hundred and seventy-four and ninety-five hundredths (374.95) feet to stream in said gulch, four hundred and nine and ninety-five hundredths (405.95) feet to north bank of said gulch, four hundred and sixty-four and ninety-five hundredths (464.95) feet to county road, four hundred and seventy-four and ninety-five hundredths (474.95) feet to the place of beginning, containing one hundred and ninety-three (193) acres and forty-three hundredths ($\frac{43}{100}$) of an acre of land, more or less, as represented by yellow shading on the following plat:

(Here follows diagram marked p. 69.)

70 Now, know ye that the United States of America, in consideration of the premises and in conformity with said Revised Statutes of the United States, have given and granted, and by these presents do give and grant, unto the said Thomas S. Wells and Wm. Moyer, and to their heirs and assigns, the said placer-mining premises above described as lot No. 281, embracing a portion of the unsurveyed public domain; to have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature soever thereunto belonging, unto the said Thomas S. Wells and Wm. Moyer and to their heirs and assigns forever, subject, nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted in its exterior limits to the boundaries of the said lot No. 281 as hereinbefore described and to any veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits which may hereafter be discovered within said limits and which are not claimed or known to exist at the date hereof.

Second. That should any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits be claimed or known to exist within the above-described premises at the date hereof the same is expressly excepted and excluded from these presents.

Third. That the premises hereby conveyed may be entered by the proprietor of any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable
71 deposits for the purpose of extracting and removing the ore from such vein, lode, or deposit should the same or any part thereof be found to penetrate, intersect, pass through, or dip into the mining ground or premises hereby granted.

Fourth. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of courts.

Fifth. That in the absence of necessary legislation by Congress the Legislature of Colorado may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to the complete development thereof.

In testimony whereof I, Rutherford B. Hayes, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the eleventh day of March, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

By the President:

R. B. HAYES,
By WM. H. CROOK, *Secretary.*
S. W. CLARK,
Recorder of the General Land Office.

Recorded vol. 38, pages 275 to 286, inclusive. Examined.

72 Endorsed: "No. 15–371. Patent. United States to Thos. S. Wells *et al.* State of Colorado, county of Lake, *ss:* Filed for record at 10 a. m. March, 27th, A. D. 1879, and recorded in Book J, page 614. Jos. H. Wells, recorder. Fees, $16.00. Pl't'ff's Ex. A. Nov. 16, 1885. C. W. R."

The plaintiff, by its counsel, offered in evidence a certificate from the register of the land office at Leadville, Colorado, showing the

date of the application for the Wells and Moyer placer patent, which was objected to by defendants' counsel as immaterial; which objection was overruled by the court; to which ruling of the court the defendants, by their counsel, then and there duly excepted.

Said paper was marked Plaintiff's Exhibit "B," and is in words and figures following, to wit:

UNITED STATES LAND OFFICE,
LEADVILLE, COLO., *October 12th*, 1885.

I, S. J. Hanna, register of the United States land office at Leadville, Colo., do hereby certify that application for patent for the Wells & Moyer placer mining claim, survey No. 281, in California mining district, Lake county, Colorado, was duly filed in this office on the 16th day of May, A. D. 1878, being application number 189, as appears from the records of this office, and entry thereof was duly made on the 22nd day of July, 1878.

(Signed) S. J. HANNA, *Register*.

73 The plaintiff, by its counsel, next offered in evidence a deed from Thomas S. Wells and William Moyer to William H. Stevens and Levi Z. Leiter, which was admitted without objection and marked Plaintiff's Exhibit "Q," and is in words and figures following, to wit:

Quitclaim Deed.

This deed, made this 8th day of October, in the year of our Lord one thousand eight hundred and seventy-eight, between Thomas S. Wells and William Moyer, of the county of Lake and State of Colorado, of the first part, and William H. Stevens, of the county of Detroit and State of Michigan, and Levi Z. Leiter, of the county of Cook, State of Illinois, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of four thousand dollars to the said parties of the first part in hand paid by the said parties of the second part, the receipt wherof is hereby confessed and acknowledged, have remised, released, sold, conveyed, quitclaimed, and by these presents do remise, sell, convey, and quitclaim, unto the said parties of the second part, their heirs and assigns forever, all the right, title, claim, and demand which the said parties of the first part have in and to the following-described "placer mining" land situate, lying, and being in the "California mining district, in the county of Lake and State of Colorado, to wit: The Wells & Moyer placer mining claim, in California mining district, excluding the following-described tracts of land, to wit: All that part of the Wells and Moyer placer mining claim being U. S. survey No. 281, U. S. mineral entry at the U. S. land office at Fair Play, Colorado, No. 155, and described as follows, to wit: Beginning at a point on the boundary line of said U. S. survey No. 281 between corners Nos. 28 and 29 thereof, whence said corner No. 28

bears N. 40 deg. W. 488.4 feet, thence running south 18
74 deg. E. 159.1 feet; thence N. 72 deg. E. 64.27 feet to said boundary line; thence N. 40 deg. W. 171.5 feet to place of beginning—

The plat and field-notes of survey being on file in the office of the surveyor general for Colorado at Denver, Colorado, and to which refference is herein made—

Excepting and reserving from said survey No. 281 the following-described parcel of said placer claim, for which said Wells and Moyer have executed a bond for a deed to George Hayes *et als.*, and being a part of the "Wm. Redick" lode, as claimed by them as above described, and the following bonded to John Thompson, and described as follows, to wit:

All that part of what is known as U. S. mineral survey No. 281 of the placer claim of Thos. S. Wells and William Moyer, and also as mining application No. 189 at the U. S. land office at Fair Play, Colorado, of the date of May 17th, 1878, which *his* within the boundary lines of the "Pennsylvania" lode, ledge, or deposit described, located and owned by the said John Thompson, excepting and reserving to themselves, the parties of the first part, forever the full right, title, and interest in and to all surface soil, gravel, or, in other words, "placer diggings," which they may discover on the piece of land hereby conveyed, which is more particularly described as follows, to wit:

Beginning at corner No. — of said Wells and Moyer placer mining claim, a granite stone marked 9–281, thence N. 72 deg. 8′ E. in the direction of cor. No. 8, survey 281, 189 feet to the intersec-
75 tion of said line with the east boundary line of "Pennsylvania" lode; thence N. 6 deg. 8′ W. 92 feet to cor. No. 4 of the "Pennsylvania" lode; thence S. 83 deg. 52′ W. 300 feet to N. W. corner No. 1 of "Pennsylvania" lode, a pine post 4 x 4″ x 4 feet long; thence S. 6 deg. 8′ E. along the west side line of the "Pennsylvania" lode 599½ feet to the intersection of said line with the line from corner No. 10 to cor. No. 11, survey No. 281; thence N. 39 deg. 56′ E. 102.5 feet to corner No. 10, survey No. 281; thence due north to corner No. 9, survey 281, the place of beginning—variations in all courses 15 deg. east.

And also excepting and reserving the following-described parcel of land embraced in survey No. 281: Beginning at corner No. 1, a stake in mound of stone, from which corner No 17 of survey No. 281 bears N. 56 deg. E. 54.2 feet, thence from said corner No. 1 W. 100 feet to corner No. 2; thence from corner No. 2 N. 300 feet to corner No. 3; thence from corner No. 3 E. 100 feet to corner No. 4; thence from corner No. 4 S. 300 feet to place of beginning—variation in all courses, 15 deg. E—containing 0.6887 acres.

And also excluding and reserving from said survey 281 the following-described parcel of said placer mining claim, for which said Wells & Moyer have executed a bond for a deed to J. P. S. McCreagh, James McPhelency, & A. Donath, said tract being described as follows, to wit:

Beginning at S. W. corner of "Genesee" lode, thence N. 40 deg.

W. 880.97 feet to intersection with south of "Pinnacle" lode; thence N. 65 deg. 15′ E. 292.15 feet to corner 25–281; thence N. 15 deg. W. 310 feet to corner 26–281; thence S. 65 deg. W. 198.52 feet to
76 corner 27–281; thence N. 409.85 feet to corner 28–281; thence S. 40 deg. E. 1,117.3 feet to S. E. corner of "Genesee" lode; thence S. 466.5 feet to the place of beginning, containing 6.02 acres, more or less.

And also excluding and reserving from said survey No. 281 the following-described parcel of said placer claim, for which said Wells & Moyer have executed a bond for a deed to Ed. B. Hepburn *et als.*, provided said Hepburn *et als.* shall strike a vein of ore in rock in place on said premises before the first day of April next, said parcel of land being described as follows, to wit:

From corner No. 1, N. E. corner of "Nisi" Prius lode, thence N. 55 deg. 20′ E. 300 feet to corner No. 2; thence northwesterly about 1,066 feet to corner No. 18, survey No. 281, same as southeast corner of "Pinnacle" lode; thence westerly 300 feet to corner No. 17, survey No. 281, same as S. W. corner "Pinnacle;" thence southerly about 1,066 feet to place of beginning.

The exterior boundaries of the said Wells & Moyer placer mining claim, survey No. 281, being as follows, to wit, variation in all courses 15 deg. east:

Beginning at corner No. 1, a porphyry rock 5 x 6 x 9″, set 7″ deep and marked 1–281, on N. side of California gulch, just above the mouth Nugget gulch, from which *a* U. S. L. M. No. 1 bears N. 73 deg. 1′ 36″ W. 10,870.63 feet and the peak of Bald Mountain bears S. 65 deg. 35′ E.; thence S. 79 deg. 28′ E. 390.5 feet to cor. No. 2; thence S. 58 deg. 8′ E. 721 feet to corner No. 3; thence S. 25 deg. 4′ W. 68 feet to corner No. 4; thence S. 66 deg. 8′ E. 738 feet to corner No. 5; thence S. 29 deg. 48′ W. 133 feet to corner No. 6; thence north 72 deg. 50′ W. 250 feet to corner No. 7; thence S. 20 deg. 48′ W. 845 feet to cor. No. 8; thence S. 72 deg. 8′ W. 200 feet to corner No 9; thence
77 S. 400 feet to corner No. 10; thence S. 39 deg. 56′ W. 750 feet to cor. No. 11; thence W. 1,271 feet to cor. No. 12; thence S. 1,164.10 feet to corner No. 13; thence W. 3,594.16 feet to cor. No. 14; thence N. 0 deg. 26′ — 1,138.69 ft. to cor. No. 15; thence E. 590 feet to cor. No. 16; thence N. 65 deg. 15′ E. 527 ft. to cor. No. 17; thence S. 50 deg. E. 472.47 feet to cor. No. 18; thence N. 65 deg. E. 531.29 ft. to cor. No. 19; thence S. 190 feet to cor. No. 2(0); thence E. 300 ft. to cor. No. 21; thence N. 329.89 feet to cor. No. 22; thence N. 65 deg. E. 152.7 ft. to cor. No. 23; thence S. 50 deg. E. 8.66 feet to cor. No. 24; thence N. 65 deg. 15′ E. 300 ft. to cor. No. 25; thence N. 50 deg. W. 310 ft. to cor. No. 26; thence S. 63 deg. W. 198.52 ft. to cor. No. 27; thence N. 409.85 feet to cor. No. 28; thence S. 40 deg. E. 1,500 feet to cor. No. 29; thence N. 466.5 feet to cor. No. 30; thence N. 40 deg. W. 652.65 ft. to cor. No. 31; thence N. 18 deg. W. 772.25 ft. to cor. No. 32; thence N. 46 deg. E. 822 ft. to cor. No. 33; thence E. 189.29 ft. to cor. No. 34; thence N. 474.95 ft. to cor. No. 1, the place of beginning, containing in all 193.43 acres:

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise

thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said parties of the first part, either in law or in equity, and also any right they may hereafter obtain from the Government of the United States therein, to the only proper use, benefit, and behoof — the said parties of the second part, their heirs and assigns forever; provided also that all of the parties pay their proportionate expense of obtaining patent.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

78 (Signed) WILLIAM MOYER. [SEAL.]
THOMAS S. WELLS. [SEAL.]

STATE OF COLORADO, } ss:
County of Lake, }

I, a notary public in and for said county, in the State aforesaid, do hereby certify that Thomas S. Wells and William Moyer, — are personally known to me as the persons whose names are subscribed to the annexed deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 9th day of October, 1878.

(Signed) A. S. WESTON,
[NOTARIAL SEAL.] *Notary Public.*

Endorsed: Thos. S. Wells *et al.* to Stevens & Leiter. Quitclaim deed. State of Colorado, county of Lake, *ss:* Filed for record at 8 a. m., Oct. 10th, A. D. 1878, and recorded in Book E, page 595. Jos. H. Wells, recorder. Fees, $3.00. Plaintiff's Ex. "C." Nov. 16, '85. C. W. R.

The plaintiff, by its counsel, next offered in evidence a deed from William H. Stevens and Levi Z. Leiter to the plaintiff company, The Iron Silver Mining Company, which was admitted without objection and marked Plaintiff's Exhibit "D," and is in words and figures following, to wit:

This indenture, made this sixth day of March, in the year of our Lord one thousand eight hundred and eighty, between Wil-
79 liam H. Stevens, of the city of Detroit, and Levi Z. Leiter, of the city of Chicago, Cook county, State of Illinois, parties of the first part, and the Iron Silver Mining Company, a corporation created by and existing under the laws of the State of New York, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar and of four hundred and ninety-nine thousand nine hundred and ninety-two shares of the full-paid capital stock of the said Iron Silver Mining Company of the par value of twenty dollars per share, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quit-

claimed, and by these presents do grant, bargain, sell, remise, release, and forever quitclaim, unto the said party of the second part, its successors and assigns, all their right, title, and interest in and to the following-described real estate and mining property, situated in the California mining district, county of Lake, and State of Colorado, and known as the Stevens and Leiter mining estate, and more particularly described as follows, viz:

First. That certain mining claim, lode, ledge, or mineral deposit situate, lying, and being in the State and district aforesaid and known as the "Iron" lode, ledge, or mineral deposit, the same being designated as United States survey lot number two hundred and thirty-three (233), reference being thereto had for a more full and accurate description of the same.

Second. All that certain mining claim, lode, ledge, or mineral deposit situated, lying, and being in the State and district aforesaid and known as the "Iron Hat lode," ledge, or mineral deposit, the same being designated as United States survey lot number two hundred and seventy-seven (277), reference being thereto had for a more full and accurate description of the same.

80

Third. All that certain mining claim, lode, ledge, or mineral deposit situated, lying, and being in the State and district aforesaid and known as "Bull's Eye" lode, ledge, or mineral deposit, the same being designated as United States survey lot number two hundred and thirty-two (232), reference being thereto had for a more full and accurate description of the same.

Fourth. All that certain mining claim, lode, ledge, or mineral deposit situate, lying, and being in the State and district aforesaid and known as the "Lime" lode, ledge, or mineral deposit, the same being designated as United States survey lot number two hundred and sixteen (216), reference being thereto had for a more full and accurate description of the same.

Fifth. All that certain mining claim, lode, ledge, or mineral deposit situate, lying, and being in the State and district aforesaid and known as the "Stone" lode, ledge, or mineral deposit, the same being designated as United States survey lot number two hundred and seventeen (217), reference being thereto had for a more full and accurate description of the same.

Sixth. All that certain mining claim, lode, ledge, or mineral deposit situate, lying, and being in the State and district aforesaid and known as the "Dome" lode, ledge, or mineral deposit, the same being designated as United States survey lot number two hundred and thirty-six (236), reference being thereto had for a more full and accurate description of the same.

81

Seventh. All that certain mining claim, lode, ledge, or mineral deposit situate, lying, and being in the State and district aforesaid and known as the "Rock" lode, ledge, or mineral deposit, the same being designated as United States survey lot number two hundred and eighteen, reference being thereto had for a more full and accurate description of the same.

Eighth. All that certain mining claim, ledge, lode, or mineral deposit situate, lying, and being in the State and district aforesaid

and known as the "Seventy-Six" lode, ledge, or mineral deposit, the same being designated as United States survey lot number two hundred and seventy-four (274), reference being thereto had for a more full and accurate description of the same.

Each of the above described and referred to lodes, ledges, and mineral deposits being, by United States Government surveys, fifteen hundred (1,500) feet in length by three hundred (300) feet in width, be the same more or less.

Also all their right, title, and interest in and to the following-named lodes, ledges, or mineral deposits, situated in the State and district aforesaid and designated and known by the following names, viz:

The "William Reddick" lode, ledge, or mineral deposit.
The "Lingula" lode, ledge, or mineral deposit.
The "Porphyry" lode, ledge, or mineral deposit.
The "Grand View" lode, ledge, or mineral deposit.
The "Wells & Moyer" placer claims and mineral deposit.
82 The "William Moyer" placer claim and mineral deposit.
The "Stevens & Leiter" placer claim and mineral deposit.
The "Sawyer Contracts" lodes and placer claim.
The "Oro" lode claim.
The "Routt" lode claim.
The "Denver" lode claim.
The "Leadville" lode claim.
The "William Montgomery" and "Bank" claims.

The intent of this instrument being to convey to the said party of the second part, its successors and assigns, all the interest of the parties of the first part in and to all the mines, lodes, ledges, and claims above specified, designated, and referred to, the same being all of the interests of the said parties of the first part in and to each and every thereof, and in and to what is known as the Stevens and Leiter mining estate, situate in the State and district aforesaid, whether the said claims or properties or either of them be in patent entries, claims, or contracts.

Also all tools, machinery, stock, ore on hand, and all other personal property connected with said mines or either of them or used in the working thereof and belonging to the said Stevens and Leiter, and to all money in banks at Leadville and Denver belonging to the mining estate conveyed hereby, not including, however, the interest of the parties of the first part to the town site of the city of Leadville, known as United States survey lot number two hundred and seventy-one (271).

Together with all the dips, spurs, and angles, and also all the metals, howsoever and in whatsoever manner and amount the same may be combined; all ore, gold and silver bearing quartz
83 rock and earth thereon, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof,

and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, and to the said premises and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, its successors and assigns forever.

And the parties of the first part hereby covenant and agree to make or cause to be made to the said party of the second part, its successors or assigns, such other or further conveyance or conveyances as the party of the second part, its successors or assigns, may deem necessary or proper to more perfectly vest or confirm the right, title, or interest in or to any of the estate, real or personal, hereby conveyed or intended so to be, such further conveyance, however, to be made upon the request and at the expense of the party of the second part, its successors or assigns.

In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) WILLIAM H. STEVENS. [SEAL.]
84 LEVI Z. LEITER. [SEAL].

Sealed and delivered in the presence of—
WILLIAM H. CLARKSON.
H. W. H. FITZGERALD.
D. F. VERDINAL.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this 6th day of March, A. D. 1880, before me, William H. Clarkson, a commissioner of deeds of the State of Colorado in and for the State of New York, residing in the city of New York aforesaid, personally appeared William H. Stevens and Levi Z. Leiter, personally well known to me to be the same persons described in and who executed the foregoing instrument as parties thereto, who severally acknowledged to me that they signed, sealed, and executed the same freely and voluntarily for the uses and purposes therein mentioned, and that the same was their free and voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal this 6th day of March, A. D. 1880.

(Signed) WILLIAM H. CLARKSON,
[SEAL.] *Commissioner for Colorado in New York,*
117 *Broadway, N. Y. City.*

Endorsed: William H. Stevens and Levi Z. Leiter to the Iron Silver Mining Company. Deed, dated 6 March, 1880. State of Colorado, county of Lake, *ss:* Filed for record at 10.30 o'clock a. m., Mar. 18, 1880, and duly recorded in Book 24, page 354. Jos. H. Wells, recorder. E. T. Wolverton, dep'ty. Plaintiff's Exhibit "D." Nov. 16, '85. C. W. R.

FRANCIS T. FREELAND, a witness called and sworn on the part of the plaintiff, testified as follows:

85 Direct examination by Mr. SYMES:

Q. Mr. Freeland, where do you reside?
A. In Leadville.
Q. What is your occupation?
A. Mining and mechanical engineer.
Q. Where do you reside?
A. In Leadville.
Q. How long have you been engaged in the practice of a mining engineer?
A. Since the fall of 1881.
Q. You were educated as a mining engineer, were you?
A. As a mining and mechanical engineer.
Q. What position are you now occupying in your profession?
A. I am superintendent of the Iron Silver Mining Company and the Nisi Prius Mining Company at Leadville.
Q. Have you been surveyor and mining engineer of that company in making the surveys?
A. Yes, sir; previous to August of this year.
Q. Do you know the Wells and Moyer placer claim?
A. Yes, sir.
Q. You may state how you know it with reference to whether you have surveyed its boundaries and whether you know its location and have been upon it.
A. Yes, sir; I surveyed all the boundary lines of that claim and have been upon it again and again.
Q. Do you know the Kit Carson lode claim, so called?
A. Yes, sir.
Q. Have you surveyed or examined the boundaries of that claim?
A. I have.
Q. Have you made a map or plat which shows correctly the boundary lines of the portion of the Wells and Moyer placer claim and of the exact location of the Kit Carson lode claim within those boundaries?
A. Yes, sir.
Q. Will you exhibit that plat to the jury and the court?
A. This is the plat (producing same).
86 Q. Proceed to state what that plat is.
A. It is a horizontal plan showing the boundary lines of a portion of the Wells and Moyer placer, which portion is in part in conflict with the Kit Carson lode. The scale is a hundred feet to the inch, and it is not possible to get the whole placer on this map. The boundary lines of the Kit Carson lode are designated in green and the corners are properly numbered. The discovery shaft, so called, is located on the map, and the corners of the placer are also numbered, which are on it. We also have laid down on the map the position of California gulch, together with certain ditches that

are dug across and over this placer for the purpose of working the said placer.

Q. Did you ever make surveys from which you made that plan?

A. I did, and compared those surveys with the notes of the patent of the Wells and Moyer placer claim and the location certificate of the Kit Carson lode claim, and they substantially agree.

Q. And you know the lines you have pointed out as showing the boundaries to that portion of the Wells and Moyer placer claim and the boundaries to the Kit Carson lode claim are correct, according to those notes?

A. Yes, sir; they are.

Q. State to the jury when that so-called Kit Carson lode claim, if you know, was first located upon the ground or any shaft first sunk there or boundaries marked by the defendants here or other parties.

A. I don't remember now the date of the location of the Kit Carson lode.

Mr. SYMES: I desire to offer the location certificate of the
87 Kit Carson lode claim for the sole and only purpose of showing the date of the location of the claim and for the purpose of having the witness say that is the ground that we had sued for that is included in the description in that location certificate.

Defendants' counsel object to the introduction of the location certificate unless it goes in for all purposes.

Which objection was overruled by the court; to which ruling of the court the defendants, by their counsel, then and there duly excepted.

Said location certificate was marked Plaintiff's Exhibit "F," and is in words and figures following, to wit:

Book 60, page 440, doc. 45990. "Copy."

STATE OF COLORADO, } ss:
County of Lake, }

Know all men by these presents that J. L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Loughlin, P. J. McNulty, the undersigned, have, this 2 day of January, 1883, located and claimed, and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of Congress approved May 10, 1872, and all subsequent acts, and with local customs, laws, and regulations, 1,500 linear feet and horizontal measurement on the Kit Carson lode, vein, ledge, or deposit along the vein thereof, with all its dips, angles, and variations as allowed by law, together with 13,327 feet on the easterly side and 11,223 feet on the westerly side of the middle of said vein at the surface, so far as can be determined from present developments,
88 and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim, 17.15 feet running N. 18 deg.

10′ W. from center of discovery shaft and 1,482.85 feet running S. 18 deg. 10′ E. from center of discovery shaft, said discovery shaft being situate upon said lode, vein, ledge, or deposit and within the lines of said claim, in California mining district, county of Lake and State of Colorado, described by metes and bounds as follows, to wit: Beginning at cor. No. 1, same as cor. No. 4, Brooklyn lode, thence S. 18 deg. 10′ E. 750 ft. to west side center stake 1,500 ft. to cor. No. 2, same as cor No. 3, Brooklyn lode, whence mon. on Mt. Elbert b'rs S. 53 deg. W., South Twin Peak b'rs S. 60 deg. 14′ W., pine stump 14″ diameter b'rs N. 62 deg. 50′ W. 8.9 ft., pine stump 26″ in dia. b'rs S. 51 deg. W. 14.2 ft., cor. 30–281 b'rs S. 31 deg. 6′ E. 12.6 ft.; thence N. 71 deg. 50′ E. 245.5 ft. to cor. No. 3; thence N. 18 deg. 10′ W. 750 ft. to east side center stake 1,500 ft. to cor. No. 4, whence Mt. Elbert b'rs S. 51 deg. 30′ W., p'k, name unknown, b'rs S. 45 deg. 15′ W., pine stump 13″ in dia. b'rs N. 40 deg. 20′ E. 44.5 ft., pine stump 15″ dia. b'rs S. 38 deg. 35′ E. 15.4 ft.; thence S. 71 deg. 50′ W. 245.5 ft. to cor. No. 1, the place of beginning, variation in all courses 14 deg. 50′ E.

(Signed)	J. L. SULLIVAN, 1-10.	[SEAL.]
	JOHN RYAN, 1-10	[SEAL.]
	PHILLIP HARRINGTON, 1-10.	[SEAL.]
	TIMOTHY CARROLL, 1-10.	[SEAL.]
	RICHARD FOLEY, 1-10.	[SEAL.]
	K. C. FISHER, 1-10.	[SEAL.]
	M. J. STEWART, 1-10.	[SEAL.]
	TIMOTHY SANTRY, 1-10.	[SEAL.]
	C. J. O. LOUGHLIN, 1-10.	[SEAL.]
89	P. J. McNULTY, 1-10.	[SEAL.]

Said lode was discovered on the 2d day of January, A. D. 1883.

Attest: —— ——.

Date of location, Jan'y 2d, A. D. 188–.
Date of certificate, Jan'y 2d, 1883.

Filed for record 3 day of Jan., A. D. 1883, at 12.30 p. m.
J. W. JACQUE, *Recorder.*

Q. Examine this paper I now show you, which has been introduced for the purpose of fixing the date of the location of the Kit Carson lode claim, and state whether or not the boundary lines of the claim as you have platted it or marked it upon the map correspond with the description in that location certificate.

A. This location certificate describes a claim which is identical with that laid down on the map and called the Kit Carson lode and fixes the discovery shaft at the point marked on the map as the discovery shaft here.

Q. What is the date of that location certificate?

A. From the location certificate, "The said lode was discovered on the second day of January, 1883; the date of location, the second; the date of survey, the second of January."

Q. Do you know anything about what is called the discovery shaft on that claim?

A. I have been to that shaft.

Q. You have been to it?

A. Yes, sir; I identified the shaft by running a line on the surface by which it could be definitely determined as to what that shaft was.

Cross-examination by Mr. THOMAS:

Q. How long have you been in the employ of the Iron Silver Mining Company?

A. With the break of a few months—about three months—since July, 1882.

Q. That time has enable you to familiarize yourself quite extensively with the boundaries and conditions of the different claims, both lode and placer, of that company?

A. Yes, sir.

Q. You have given, if I understood you right, only a por-
90 tion of the Wells and Moyer placer claim upon the plat which you have testified to?

A. Yes, sir; only that portion which shows clearly the conflict with the Kit Carson lode. The rest of it runs somewhat to the margin of the map.

Q. That is, if you had given the whole of it the scale which you had used would make the piece of paper which you have used, or cloth, not large enough to take the whole of it?

A. No, sir.

Q. I notice a yellow square or a yellow parallelogram in a portion of that claim you have platted there. What does that intend to represent?

A. In the deed of Wells and Moyer to Stevens and Leiter that small square, oblong, one hundred by three hundred feet, was excepted.

Q. This is what you say was excepted?

A. Yes, sir.

Q. What is that?

A. I don't know.

Q. Isn't it a lode claim?

A. Not that I know of. I never saw any work done there.

Q. How did you get at the boundaries of it?

A. It is described in this deed of Wells and Moyer to Stevens and Leiter.

Q. Is it described by name or by boundaries?

A. Simply by boundaries; there is no name given to it.

Q. You don't know, then, whether it is a lode claim or not?

A. No, sir.

Q. You don't know who owns it?

A. I don't know who does own it.

Q. What is represented by this portion of the plat which you have drawn the yellow line around?

A. That is a piece of ground that was described in the deed to Stevens and Leiter as being reserved in that deed.

Q. Is it a lode claim?

91 A. I don't know; simply as a piece of ground by metes and bounds.

Q. You don't know whether that has any name or not?

A. I can't remember clearly now; the original deed will show.

Q. What is intended to be represented by these marks down here?

A. They are the corners of the Wells and Moyer placer.

Q. Running in this direction?

A. Yes, sir; running in their natural order.

Q. Is not the space beyond it the boundaries of lode claims?

A. Yes, sir.

Q. Are not those boundaries which you have marked here and here and there also the boundaries of lode claims?

A. No, sir.

Q. Are not a great many of them?

A. They are placers.

Q. The Wells and Moyer placer claim and the Moyer placer claim join, do they not?

A. Yes, sir.

Q. This blue line here is identical with this blue line here; one is contiguous to the other?

A. Yes, sir; this corner here is identical with that corner, and this nitch fits over that line.

Q. Why didn't you put them all together.

A. I was not under the impression that both cases would be tried together, and it would be more convenient to show them on different plats.

Q. Weren't these peculiar boundaries of the ground which was taken up necessitated from the fact that all vacant ground not included in those lode claims were sought to be covered by the Wells and Moyer placer?

A. I can't tell what the reason of the locators in locating the claims in that way was.

Q. You weren't there at the time the location was made?

92 A. No, sir.

Q. Mr. Freeland, I show you a smaller map, and I will ask you if that correctly represents the boundaries of the Wells and Moyer placer claim in full.

A. This yellow shading——

Objected to by plaintiff's counsel because not cross-examination; which objection was overruled by the court.

WITNESS: That portion of the map represented here as shaded with yellow is substantially correct, as far as I can determine from an inspection of it, and agrees with my plat there, with the exception that that is on a larger scale and shows only that portion of the placer in the neighborhood of this conflicting claim. This shows

the ground as patented to Wells and Moyer, I believe, the ground as it is exhibited in the patent.

Q. Are there not two lode claims, known as Pease's ground and the Nisi Prius, that separate the Wells and Moyer placer into two separate divisions, cutting entirely across?

A. I remember two such locations, a portion of ground that the alleged owners of these claims hold under those names. They hold as part of the placer, obtained by deed from Wells and Moyer to them.

Redirect examination by Mr. SYMES:

Q. Mr. Freeland, you pointed out from that plat a small parallelogram of ground bounded by yellow shading within that portion of the placer claim. You said that was not a lode claim, but a piece of ground that had been deeded?

A. Yes, sir.

Q. It was included in the patent, was it not?

A. It was included in the patent.

Q. But has been deeded since?

93 A. Yes, sir; the deed of, to the best of my knowledge and belief—the deed of Wells and Moyer to Stevens and Leiter and by them to the company contains certain exceptions, and this was one of those exceptions.

Q. And that was excluded in that deed?

A. Yes, sir; to the best of my knowledge and belief it was one of those small placer claims that formed a part of the original consolidation that they couldn't get in the consolidation, and it was left out.

By Mr. THOMAS:

Q. Don't you know that that constitutes what is called the Nisi Prius lode, Mr. Freeland?

A. To the best of my knowledge, it is not; it is down there by the old placer workings.

Q. You are the superintendent of the Nisi Prius Company, you say?

A. Yes, sir.

Q. And do you mean to say that is a different piece of ground from what is known as the Nisi Prius lode?

A. Yes, sir; I do; it does not belong to the company.

The plaintiff, by its counsel, offered in evidence the plat which was identified and testified to by the witness, which was admitted without objection and was marked Plaintiff's Exhibit "C," and is in words and figures following, to wit:

(Note by Clerk.—Plat Exhibit "C" not here.)

The plaintiff here rested its case.

And thereupon the defendants, to maintain the issues herein on their behalf, gave in evidence as follows—that is to say:

The defendants, by their counsel, offered to read the deposition of George Leonhardy in evidence, which was taken by stipulation.

94 Mr. SYMES: We object to the reading of the deposition at this time, because the defendants have not yet shown that they have any lode claim in any way whatever except that we have shown that the location certificate was filed at a certain time to fix the date of the location.

The COURT: The defendants can put in evidence all they wish as to the existence of a lode and the knowledge of the patentee of it with a view to make their record. If you can prove any other lodes tending to prove this one, that is to say, the purpose would be incorrect in general, but we all understand very well the theory in respect to this ground is there is one lode going all through; so if they offer testimony to show there are other lodes around there it tends to prove the existence of this lode.

Mr. OWERS: Anything which is not a discovery, and which they claim, they certainly have no right to attempt to prove, and they have no rights if they have no discovery. They must first prove a discovery before they can establish the existence of a vein.

The COURT: Well, Mr. Owers, the theory upon which they proceed is that you never got this lode, being known to you. Whether they made a valid location of it or not is another question; but if it was known to the patentee at the time of the entry, whether located or not, their position is, and they are going to maintain it in the Supreme Court if they can, that you never got title to it by means of your placer patent.

And thereupon defendant's counsel read the deposition of GEORGE LEONHARDY, which is in words and figures following, to wit:

95 Direct examination by Mr. THOMAS:

Q. Where do you reside?
A. I reside at Riverside, Chaffee county.
Q. How long have you lived in that section of the State?
A. About 23 years.
Q. State whether or not Chaffee county was originally a part of Lake county.
A. It was.
Q. How far is Riverside from the city of Leadville, in Lake county, about?
A. About 30 miles.
Q. Did you ever live in California gulch, in Lake county?
A. Yes, sir.
Q. When was that?
A. That was in 1863 and 1864.
Q. During your residence in Colorado what has been your occupation?
A. Mining and farming.
Q. About how much of that time have you given to mining?
A. I have been more or less engaged all the time in mining.

Q. What sort of mining?

A. Placer mining principally, and part lode mining.

Q. What part of the country have you been engaged in in placer mining, and when?

A. I was engaged in placer mining in 1863 and 1864 in California gulch, and since then principally in Riverside, on the Arkansas river.

Q. Do you know where the location known as the Wells and Moyer placer claim is?

A. I do.

Q. How long have you been familiar with the premises now covered by that claim?

A. I have known them ever since 1863.

Q. At that time state what the character of the mining was, for the most part, in that vicinity.

A. Placer mining.

96 Q. State, if you know, of any lode locations or claims adjoining the Wells and Moyer placer claim; and, if so, when you first knew of their existence.

Objected to by plaintiff as immaterial and irrelevant.

Mr. SYMES: The plaintiff objects to all testimony in the deposition of George Leonhardy on the ground that it is entirely immaterial whether or not there were any lode claims located in the vicinity, and because it is not competent or relevant to show the character of the land, whether lode, placer, or of any other character, after the patent has issued.

Which objections were overruled by the court.

A. I remember of a great many holes having been sunk there between, well, 1860 up to 1870, or say '80, and in the other days we had the Pennsylvania, "520," and "1860," worked by Captain Breese; Pennsylvania was worked by Thompson.

Q. Do you know of a claim called the Oro La Plata?

A. Yes, sir.

Q. When did you first know of such claim?

A. I knew of that claim, if I recollect right, in 1876.

Q. Where is that located with reference to the Wells and Moyer placer claim?

Objected to by plaintiff as immaterial and irrelevant, for the reasons last above given; which objection was overruled by the court.

A. It is; *m*art of it, I should think, is on the Wells and Moyer placer.

Q. Did you in 1876 or at any time make any examination of the underground workings of the La Plata?

97 Objected to by plaintiff as immaterial and irrelevant and for the reasons above given; which objection was overruled by the court.

A. I was not under ground, but I examined the dump.
Q. What evidence of vein matter did you find upon the dump?

Objected to by plaintiff as immaterial and irrelevant and for the reasons above given; which objection was overruled by the court.

A. I found carbonate of iron.
Q. You spoke a moment ago of the Pennsylvania. When did you first know of such a location?

Objected to by plaintiff as immaterial and irrelevant and for the reasons above given; which objection was overruled by the court.

A. It must have been about 1872 somewhere, if I recollect right.
Q. Where is that located with reference to the Wells and Moyer placer?

Objected to by plaintiff as immaterial and irrelevant and for the reasons above given; which objection was overruled by the court.

A. That is on the outskirts; in fact it ran into the Wells & Moyer placer, part of it, in the upper end.
Q. When you speak of the upper end which end do you mean with reference to the points of the compass?
A. The gulch lies about east and west; then it would be on the east side of the Wells & Moyer placer.
Q. Did you ever examine the underground workings of the Pennsylvania?

Objected to by plaintiff as immaterial and irrelevant and for the reasons above given; which objection was overruled by the court.

98 A. I did; the first work they did on it I should think it must have been about 15 or 20 or 30 feet down. That was in 1872.
Q. State whether it disclosed any vein, lode, or rock in place; and, if so, what kind of a one and what its general direction was.

Objected to by plaintiff as immaterial and irrelevant and for the reasons above given; which objection was overruled by the court.

A. I went in. They were in quartz first, and by sinking deeper they got into galena.
Q. State how this quartz and galena were situated in the earth, as to being in place.

Objected to by plaintiff as immaterial and irrelevant and for the reasons above given; which objection was overruled by the court.

A. Well, I could not really say. It was in solid formation, but I really could not say which way it pitched. I knew at the time, but I have forgotten.
Q. Do you know of any mines adjoining the Wells & Moyer called the Rock and Dome mines?
A. Yes, sir.
Q. How long have you known of them?
A. I have known of them since 1868; at least, I know of the outcroppings since then.

Q. When you speak of knowing the outcrop since then what do you mean?

A. I was prospecting there and discovered the outcroppings.

Q. Outcroppings of what?

A. Iron carbonates.

Q. When did you first know of them as lode locations?

A. I knew of them in 1876.

Q. Did you ever examine any of the underground workings of the Rock and Dome claims?

99 Objected to by plaintiff as immaterial and irrelevant and for reasons above given; which objection was overruled by the court.

A. I was in, I think it was in 1877—in the fall of 1877 I was there and they had done a great deal of work there. I was to the entrance of the mines in 1877 and there was a great deal of mineral lying around in every direction there that they had wheeled out and was shipping; in fact, they had shipped mineral from there in 1876, but I had not then been to the workings.

Q. Have you never been in the workings?

A. Not in 1876, but in 1877 I went in.

Q. Now, I will ask you to state what, if anything, is disclosed in the way of mineral; and, if anything, how it is situated and what its general dip is.

Objected to by plaintiff as immaterial and irrelevant and for reasons above given; which objection was overruled by the court.

A. In those days we were not conversant with that quality of mineral, and when discovered—that mineral there—it attracted considerable attention, and we all would go there and examine and we found it was a big body of carbonates—iron carbonates—being worked on it, and it seemed to run into the hill.

Q. State whether it ran into the hill in the direction of or away (from) what is now the Wells and Moyer placer.

Objected to by plaintiff as immaterial and irrelevant and for reasons above given; which objection was overruled by the court.

A. In the direction of the Wells and Moyer placer.

Q. At about what angle of inclination?

100 Objected to by plaintiff as immaterial and irrelevant and for reasons above given; which objection was overruled by the court.

A. Well, I really could not tell.

Q. Was the pitch of the mineral more or less perpendicular or more or less horizontal.

Objected to by plaintiff as immaterial and irrelevant and for reasons above given; which objection was overruled by the court.

A. More or less horizontal.

Q. When you speak of iron carbonates state whether or not you speak of ores carrying silver, gold, or lead.

Objected to by plaintiff as immaterial and irrelevant and for reasons above given; which objection was overruled by the court.

A. I speak of ores carrying lead, silver, and gold.

Q. Are these deposits of iron carbonates, of which you speak, in place?

Objected to by plaintiff as immaterial and irrelevant and for reasons above given; which objection was overruled by the court.

A. Yes, sir.

Q. State whether or not, during the times or any of them that you have mentioned, there was any knowledge among the people in that vicinity or neighborhood as to the existence or non-existence of any vein or deposit of mineral ore underneath the premises now known as the Wells and Moyer placer claim.

Objected to by plaintiff as immaterial and irrelevant and
101 for the reasons above given; which objection was overruled by the court.

A. There was.

Q. State what that knowledge was—that is, as to whether there was or was not.

A. There was knowledge that there was mineral; wherever they sunk there they found mineral, you might say.

Q. What is meant by mineral in rock in place among miners?

A. Where you strike a body of mineral that don't seem to have been disturbed and is in solid formation.

Q. What is meant by placer deposits?

Objected to by plaintiff as immaterial and irrelevant, and because the United States statute (sec. 2329) defines what is placer deposits; which objection was overruled by the court.

A. Placer deposits is wash gravel containing gold.

Q. What proportion, if you know, of the Wells and Moyer placer claim is what is known or might be termed among miners as placer ground?

Objected to for the reason that the character of the ground cannot be inquired into. It is an incompetent question for the reason
102 that the patent itself is conclusive evidence of the character of the ground; which objection was overruled by the court.

A. There is a very small proportion. I should think from 5 to 7 per cent.

Q. Where is the 5 to 7 per cent. to be found; in what part of the claim?

A. That is in the gulch, at the foot of the hill.

Q. I will ask you, Mr. Leonhardy, if you are acquainted with W. H. Stevens?

A. I am.

Q. How long have you been acquainted with Mr. Stevens?

A. I have known him since '76.

Q. Has your acquaintance with him been intimate or otherwise?

A. It has been intimate.

Q. Did you ever have any conversation with. Stevens about the premises included in the Wells and Moyer placer patent in the spring of '77?

Objected to by plaintiff as immaterial and irrelevant, and for the reasons above given; which objection was overruled by the court.

A. I have.

Q. Where was that conversation?

A. That was at my house, in Riverside.

Q. State what that conversation was.

Objected to by plaintiff as immaterial and irrelevant, and for the reasons above given; which objection was overruled by the court.

A. In the spring of '77 Mr. Stevens came to my house, and he had brought out a great many men from Detroit to work for him in California gulch in that vicinity, and he stopped there over night, and while he was there he spoke very illy of the country; said the country wasn't worth anything. I finally told him that I thought
103 that his actions belied his words. He wanted to know why. "Why," said I, "you are bringing out here three or four hundred men, paying their expenses out here, and I know that you are sharp enough not to lay out money that way unless you are going to have some return for it." He then didn't say anything more until after breakfast. He told his men to get ready and go onto the road, and they went out. Some were in the house and some were in the ambulance. He told them to hitch the horses in the ambulance and get ready, and he followed them outdoors; and he came back and shut the door and he told me he had staid there to have a long talk with me, and said, "You may think it queer the way I am acting. The country is good, the best mineral country I ever saw; but if I told the men so they would leave me as soon as they get up there and go on their own hook." Then he told me he had been there since '76, and what the result was and what he had expended. He had sunk several locations—a great many—built houses, and expended some thirty thousand dollars. Now he had found an immense body of mineral underlying all that ground there; that he had shipped a great many tons; that they had netted him so much—the figures I forget, but they had paid him a handsome profit; that he was going up there to secure the ground and begin very heavy operations shipping ore.

Q. State what he said, if anything, at the time about his intention of locating territory upon the dip of the veins he had discovered.

Objected to by plaintiff as immaterial, incompetent, and irrelevant, and for reasons above stated; which objection was overruled by the court.

104 A. Well, about, I should think, a week or two weeks afterwards—I don't know exactly—he got into trouble up there, and

he concluded that the atmosphere was better down below at my house than it was up there. He came down; said they had treated him very badly up there—the miners—that they were afraid he was going to gobble up the whole country; "but if I cannot do it in one way I will do it in another," he said. "I have spent more money up there than anybody else, and I am entitled to the ground."

Q. State what, if anything, he said on either of these occasions his object to be in taking up large areas of territory.

A. So as to secure the mineral there was on it.

Q. What kind of mineral?

Objected to by plaintiff as immaterial, incompetent, and irrelevant; which objection was overruled by the court.

A. Carbonate mineral they were shipping there at that time.

Q. In place?

A. In place.

Cross-examination by Mr. OWERS:

1 X. Did Mr. Stevens ever say anything to you at this time you speak of about his having the top or apex of the vein?

A. He did not; we didn't know anything about apexes in those days.

2 X. Did he say anything about having an outcrop?

A. He simply told me he had prospected that country and had found a great deal of mineral there throughout; it was underlying the whole country.

3 X. Did he say anything about the outcrop of any vein?

A. No, sir; he did not.

4 X. Do you know the Iron mine locations?

A. I do.

105 5 X. Don't they follow the course of that vein?

A. Do you mean the Iron mine?

6 X. Do the Iron mine locations follow the course of that vein you speak of as known—as far as it is known—as far as it is traced?

A. I have not been in the Iron mine.

7 X. I do not speak of the Iron mine proper; I speak of the Iron mine locations, the properties of the Iron Company.

A. I don't know whether they follow that or not, because I have never been inside of them.

8 X. What is the general strike of that vein?

A. The general strike of that vein, I suppose—up there on Rock hill, do you mean?

9 X. On Rock hill and on Iron hill.

A. Well, it dips right into the hill there.

10 X. I asked for the strike.

A. I don't know what you mean by the strike.

11 X. The course of it.

A. The course of it; that is what I mean. It runs into the hill, say, from the west to the east—towards the east.

12 X. You mean that it dips east into the hill?

A. That is what I mean. I may be wrong as to the course.

13 X. What do you mean by the course or strike of a vein?
A. I mean the way the mineral dips.
14 X. You do not recognize any difference between the course or strike and the dip of the vein?
A. I do. There are two classes of veins up there. We have the perpendicular vein and we have the horizontal or blanket veins. We have two veins.
106 15 X. What is the difference between the course or strike and the dip?
A. One of them runs down into the ground at a very small angle, while the other runs more horizontally.
16 X. When you speak of the course or strike of the vein you mean the dip of the vein?
A. The dip.

Redirect examination by Mr. THOMAS:

1 R. D. Which kind of deposit is this that you speak of? Is it perpendicular or blanket or horizontal?
A. I call it a blanket.

Before signature I have corrected answers to my cross-examination as follows: To cross-questions 15 and 16 I desire to make answer that the strike of a vein is its course across the country, while its dip is the angle of its inclination downwards into the earth.
When questions were asked I understood Mr. Owers to want me to describe the difference between course and strike of blanket veins and fissure veins.
(Signed) GEO. LEONHARDY.

JOHN L. SULLIVAN, a witness called and sworn on the part of the defendants, testified as follows:

Direct examination by Mr. THOMAS:

Q. Mr. Sullivan, where do you live?
A. In Leadville.
Q. How long have you lived in Leadville?
A. Six years and five months.
Q. What is your business?
A. Mining.
Q. How long have you followed the business of mining?
107 A. The biggest part of fifteen years.
Q. Where are you at present engaged in working?
A. In Leadville.
Q. Do you know—or I will ask you where you were living the commencement of the year 1883?
A. I was living in Leadville.
Q. Do you know where the Wells and Moyer placer claim is?
A. Yes, sir.
Q. How far is that from the city of Leadville?
A. As near as I can fix, about two miles.

Q. In what direction?
A. It is southeast.
Q. Did you ever go upon the ground that is included within the boundaries of that claim?
A. Yes, sir.
Q. For the purpose of doing any work?
A. Yes, sir.
Q. When was that?
A. In 1883.
Q. What time in the year?
A. January the second, I think.
Q. What kind of work did you begin to do there?
A. Sink a shaft.
Q. How long did you work upon that shaft in sinking it?

Mr. SYMES: I suppose this testimony is for the purpose of showing he went upon the placer claim in 1883 and located a lode mining claim. We object to all such testimony, because the patent was issued in March, 1879. I believe it was something over three years before this defendant went upon the ground to locate a lode claim; therefore, as we understand, he could give no testimony in connection with that or this location certificate, which *which* has been introduced for only one purpose. We object to all testimony regarding any discovery, location, or work upon the Kit Carson lode claim, because the record shows that there was no attempt to discover or lo-
108 cate said lode claim until over three years after the issuing of the Wells and Moyer placer patent and over four years after the date of the application of the Wells and Moyer placer patent, and for the reason that it tends to establish an initiation of the title in a trespass; which objection was overruled by the court.

A. About three months.
Q. Who was with you engaged in sinking that shaft, if any one?
A. There were five more besides myself.
Q. What were their names?
A. C. J. Laughlin, M. J. Stewart, P. J. McNulty, K. S. Fisher, and Timothy Santry.
Q. To what depth was that shaft sunk?
A. To a depth of about a hundred feet, as near as I can judge. I didn't measure it.
Q. What was it sunk through?
A. It was sunk through forrest rock, with vein matter on each side of the shaft all the way down.
Q. What was in the bottom of the shaft at the time you quit working?
A. There was porphyry on one side and contact on the other.
Q. When you say contact what do you mean?
A. A decomposed porphyry carrying mineral.
Q. Was any work done subsequent to that time by others on the shaft?
A. Yes, sir.

Q. This decomposed porphyry of which you speak, carrying mineral, state whether it was in place or not.
A. Yes, sir.
Q. What other work was done upon the shaft, and when?
A. It was sunk ten feet on a contract afterwards—ten feet deeper.
Q. When was that?
A. That was in 1884.
109 Q. What did that show, if anything?
A. That showed the vein largened to eighteen inches.
Q. State what you did with reference to erecting any notice at the mouth of the shaft—discovery notice.
A. We placed a discovery stake on the shaft about, maybe, two feet from the edge of the shaft.
Q. What, if anything, did you do with regard to marking any surface boundaries of any claim?
A. We marked the surface boundaries.
Q. How?
A. Fifteen hundred feet by three hundred, one hundred and fifty feet on each side of the stake we put up.
Q. How many stakes did you put up?
A. Six.
Q. Where did you place them?
A. We placed four corner stakes and two center side stakes.
Q. Were those stakes hewed in any way?
A. Yes, sir.
Q. How?
A. They were hewed on the inside and marked the number of the stake and the name of the claim.
Q. State whether you afterwards filed any location certificate for record.
A. Yes, sir.
Q. Is that it (witness shown paper)?
A. Yes, sir.
Q. Can you give about the time when you first went to California gulch?
A. 1879.
Q. What time in 1879?
A. In November.
Q. Do you know the claim called the Oro La Plata?
A. Yes, sir.
Q. What did you call this claim of yours?
A. Kit Carson.
Q. How far is the Kit Carson from the Oro La Plata?
A. The Kit Carson is about six hundred feet.
Q. That is, the shaft of the Kit Carson?
A. No, sir; seven hundred and fifty feet from the Oro La Plata shaft to the Kit Carson; the side line is six hundred feet.
110 Q. Do you know of a lode claim called the William Reddick?
A. Yes, sir.
Q. How far is the Kit Carson from the William Reddick?

A. Three hundred feet.

Q. Do you know of one called the H. D.?

A. Yes, sir.

Q. How far is the Kit Carson from the H. D.?

A. The upper corner stake—that is, the east corner stake of the H. D.—is about two hundred and seventy-five feet from the corner stake of the Carson, as near as I can get at it.

Q. What is the character of this vein of mineral of which you have spoken with reference to the manner it lies in the ground?

A. You couldn't call it perpendicular, because it is pitching a little into the hill.

Q. What are the walls?

A. One wall is porphyry and the other wall we haven't found yet.

Q. How far is this claim from a lode claim called the Gilt Edge?

A. It is about twenty-five feet from the side line of the Gilt Edge.

Q. State how far the boundaries of the Kit Carson are from the Stone mining claim.

A. As near as I can get at it, it is nine hundred feet—that is, from the workings of the Stone. I don't know by their side lines.

Q. How far is the Kit Carson from the line of the Stone incline, if you know?

A. From what portion of the Stone incline?

Q. I will ask you to state whether or not the Stone incline passes underneath or near the shaft of the Kit Carson.

A. It don't come to the shaft; it passes inside of the boundary line of the Kit Carson; that is as near as I can get at it.

Q. It comes within the lines of it?

A. Yes, sir.

111 Q. Below or above the bottom of the shaft?

A. On the west side of the shaft.

Q. I know; but up and down, perpendicularly, how far under the shaft, if you know?

A. About two hundred and ninety feet, as near as I can recollect.

Q. Do you know who ran that incline?

A. The Iron Silver Mining Company.

Q. Have you ever been in it?

A. I have been in it thirty feet from the mouth of it.

Q. But no further?

A. No further.

Q. Where is your shaft located with reference to the line of the gulch?

A. The line of California gulch?

Q. Yes, sir. Is it in the gulch or on the side hill?

A. It is located on the side hill south of the gulch.

Q. How many feet of elevation above the bed of the gulch is the collar of the shaft?

A. The collar of the shaft, I should judge, is about fifty feet elevated from the bottom of the gulch.

Cross-examination by Mr. SYMES:

Q. Mr. Sullivan, you sunk that shaft you say, in January, 1883, about ten feet deep?
A. 1883.
Q. Ten feet deep?
A. About one hundred feet, as near as I can get at it; I didn't measure it.
Q. You think it is a hundred feet deep, do you?
A. I should judge so.
Q. Did you strike any water?
A. No; we haven't got any water, not to bother.
Q. Did you strike any vein in it?
A. Yes, sir.
Q. What vein did you strike?
A. Struck a vein carrying mineral.
Q. What do you call it?
A. It is a decomposed porphyry.
Q. What are your walls of this decomposed porphyry vein?
112 A. The wall was a hard porphyry.
Q. A hard porphyry?
A. Yes, sir; a granite porphyry.
Q. How wide was this decomposed porphyry vein that had porphyry for its walls?
A. When we quit working the last there it was eighteen inches.
Q. Eighteen inches wide?
A. Yes, sir.
Q. How wide was it above in the shaft?
A. When I first struck it it was about six inches wide.
Q. At what depth in the shaft did you first strike it?
A. We struck it at the depth of nine feet.
Q. You say it is about six inches wide there?
A. Yes, sir.
Q. You say it was very near perpendicular also?
A. Yes, sir; very near.
Q. You followed it all the way down?
A. Yes, sir.
Q. This is an entirely separate and distinct vein from this contact vein that Mr. Leonhardy and others swear about, that is discovered in these shafts adjoining the placer claim owned by the Iron Company and by other individuals?
A. I don't know as it is a separate vein.
Q. You don't?
A. No, sir.
Q. Do you think this is the same vein that is developed so very extensively in Iron Hill and in that vicinity, called the carbonate contact vein?
A. Yes, sir.
Q. You think it is the same one?
A. I think it is.
Q. It comes straight up through your shaft. What vein do you

think is discovered and worked upon in the Stone mining claim and in the Stone incline which you have mentioned, that is about three hundred feet underneath your shaft, and which incline you have been in?

A. What vein is it?

Q. Yes; what vein is that?

A. Why, certainly, it is a contact vein, or contact carrying mineral.

113 Q. Is it different or the same vein which is bounded on both sides by porphyry, hard porphyry and the vein matter, or vein of decomposed porphyry which you have developed in your shaft?

A. It is connected with that vein, in my opinion.

Q. That is your opinion?

A. Yes, sir; it is connected with that vein.

Q. You think this decomposed porphyry vein with porphyry walls, which you say you have discovered and developed in your shaft, would cut into this carbonate vein below?

A. Yes, sir.

Q. Then it is a feeder or branch of that vein?

A. It is a feeder.

Q. What does it feed that large deposit of ore below with—decomposed porphyry; or is it fed with carbonates?

A. What is it fed with?

Q. Yes, sir.

The COURT: You can't ask any such question as that. You must ask about facts.

Q. But you think it is a part of the same carbonate vein that is below?

A. Yes, sir.

Q. How far do you say you think you have to go before you reach the carbonate vein?

A. In my opinion, it would be three hundred feet.

Q. You think that this decomposed porphyry vein extends down to and connects with that carbonate vein below?

A. I think it is one and the same, connected.

Q. Why do you think so?

A. From practical knowledge of mining.

Q. Have you ever known a decomposed porphyry vein perpendicular, with hard porphyry walls, to connect with and form
114 a part of a carbonate contact vein, with limestone underneath, with porphyry hanging wall?

A. Yes, sir.

Q. State when and where you knew of it.

A. I found it in Leadville, Lake county.

Q. In what known mines or shafts?

A. I found it on Rock hill in three different shafts.

Q. Give us the names of the shafts and claims.

A. One of them was on the Pennsylvania, the other on the Philemon.

Q. How deep is the Pennsylvania shaft?

A. The Pennsylvania is about eighty-five feet deep—when I was there.

Q. Did you work in it, Mr. Sullivan?

A. Yes, sir; I worked a week in it.

Q. Doesn't that shaft show lime?

A. Yes, sir; but there is porphyry.

Q. Also?

A. Yes, sir; a decomposed porphyry.

Q. And lime?

A. Yes, sir.

Q. There is no lime in your shaft?

A. We haven't got to lime yet.

Q. What is there in the Pennsylvania shaft above the lime?

A. Above the lime?

Q. Yes, sir.

A. The line is pitching into the hill, and the porphyry lays over it for a hanging wall and the lime for a foot wall.

Q. Does the Pennsylvania shaft follow that contact vein with the lime underneath and the porphyry overhead?

A. No, sir; they sunk the shaft down and drifted.

Q. Then the drift is on the contact vein?

A. The drift is sunk near the lime and drifted to catch the mineral.

Q. The shaft above is through porphyry?

A. Yes, sir; for a hanging wall.

Q. You say there is a decomposed porphyry vein also in
115 that shaft?

A. Yes, sir.

Q. What is the dip of this contact vein—carbonate vein—so extensively developed there, and that is found in the Stone incline?

A. That is found in the Stone incline?

Q. Yes, sir; what is the dip of that carbonate vein found in any of those extensive workings?

A. I couldn't exactly say the dip of the Stone incline.

Q. Well, the vein.

A. I should judge from appearances it was over thirty degrees.

Q. The vein in your shafts, decomposed porphyry vein, is nearly perpendicular?

A. Pretty near.

Q. And you think it is the same vein?

A. It will connect with it.

Q. Did you have any assays made to find any mineral?

A. I had one assay made on it.

Q. Did you find any mineral?

A. Yes, sir.

Q. How much?

A. I think it was three ounces in silver and eight or ten per cent. in lead; I don't remember just now.

Q. Did you not commence to sink that shaft and locate that claim.

with the sole and only view of reaching by your shaft that contact vein before developed in the iron workings on the Stone claim?

A. I don't understand you.

Q. Did you not go there and sink the shaft that you have described and named the Kit Carson lode claim for the sole and only purpose of sinking down until you should connect with the contact vein developed in the Stone workings—the Stone incline of the Iron Company?

A. You want to find out our purpose in locating it?

Q. Yes, sir; that is what I asked very plainly.

A. It was, of course, for to discover mineral.

116 Q. What vein, or what mineral did you expect you would discover, or anticipate you would discover?

A. Ore; the ore-shoot that runs under Rock hill through the Stone incline.

Q. What is generally known as the carbonate vein?

A. Yes, sir.

Q. Then it was a surprise to you to find this decomposed porphyry vein in the shaft—you weren't looking for that?

A. I looked for that just as well as I did for anything else. I was liable to find it at any time on Rock hill.

Q. Do you say you are liable to find a carbonate vein anywhere on Rock hill without going anywhere from two hundred and fifty to three or four hundred feet?

A. Yes, sir.

Q. You say you are?

A. Yes, sir.

Q. At what point?

The COURT: All that examination is of no value.

Q. Do you know where that carbonate vein outcrops on Rock Hill?

A. Yes, sir.

Q. In what claims does it outcrop?

A. It outcrops in the Oro La Plata.

Q. Does it outcrop in the Rock and Dome claims?

A. Yes, sir.

Q. Does it outcrop in the Stone main incline?

A. I couldn't say.

Q. It is one and the same vein that runs up that whole hill?

A. Yes, sir.

Q. That you find in this shaft a hundred feet below the surface?

A. Yes, sir.

Redirect examination by Mr. THOMAS:

Q. Mr. Sullivan, you were asked if you sunk your shaft down a hundred feet. Will you state why you hadn't sunk it deeper?

117 A. Yes, sir; we were throwed into litigation by the Iron Silver Mining Company.

Recross-examination by Mr. SYMES:

Q. Were you enjoined from sinking that shaft by injunction?
A. Well, I think so; we were stopped, anyway, from working.
Q. How were you stopped?
A. By a notice from the Iron Silver Mining Company.
Q. What kind of a notice? Was there any notice ever served on you whatever except a summons to answer in this legal action?
A. Yes, sir.
Q. Except that?
A. No, sir; that was the only notice that was served on me.
Q. And that notice was to answer in this suit on trial this legal action?
A. That was in 1883 that I received that.
Q. There has never been any injunction or any order served on you in any injunction case enjoining you from working on this claim?
A. No, sir.
Q. Then, when you stated you were stopped from working by the Iron Silver Mining Company by any right of possession, you were mistaken?
A. I say we stopped ourselves at the time we were thrown into litigation, as I said before.

CHARLES C. BALDWIN, a witness called and sworn on the part of the defendants, testified as follows:

Direct examination by Mr. THOMAS:

Q. Mr. Baldwin, where do you reside?
A. In Leadville, Colorado.
Q. How long have you lived in Lake county?
A. Since the early part of 1877.
Q. How long have you lived in Colorado?
118 A. Since the early part of 1877.
Q. What is and what has been during that time your business?
A. Civil and mining engineer.
Q. Are you acquainted with Mr. William H. Stevens and Mr. Levi Z. Leiter?
A. Yes, sir.
Q. Do you know Thomas S. Wells or William Moyer, or both of them?
A. Yes, sir; both of them.
Q. How long have you been acquainted with them?
A. I became acquainted with William H. Stevens and Thomas S. Wells and William Moyer in 1877; Mr. Leiter in 1878.
Q. Were you at any time ever employed by Stevens and Leiter in your capacity as civil and mining engineer?
A. Yes, sir.
Q. When was that and how long did such employment last?

A. It began in the year—the early part—of 1877 and lasted for about a year and a half.

Q. Are you familiar with the two placer locations known as the Wells and Moyer and the Moyer locations?

A. Yes, sir.

Q. Who made the surveys of those claims?

A. I made the location survey for a portion of the Wells and Moyer and Henry D. Bates made the location survey and patent survey for the William Moyer placer.

Q. Was Henry D. Bates connected with you in business at all?

A. No, sir.

Q. State whether you assisted him in making the survey of the Moyer placer.

A. I did not.

Q. What part of the Wells and Moyer did you survey, and when?

A. I surveyed for location about the west two-thirds of the Wells and Moyer placer early in 1878.

Q. State to the jury by whom you were employed to make that survey.

A. It was William H. Stevens.

Q. State how it was that a survey was made in the names
119 of Wells and Moyer under the employment of Mr. Stevens.

Objected to by plaintiff because it is entirely immaterial and irrelevant who employed the surveyor to make the survey or how or by whom it was made. Plaintiff also objects to all testimony regarding the survey and location of the claims after the patent was issued; which objections were overruled by the court.

A. I made that; I made the location survey. It was located by William H. Stevens; consequently it took in a portion of the Wells and Moyer placer, and I understand from the record that it was deeded to them; but I had nothing to do with that survey.

Q. State why the survey—the first survey—was not completed in the name of William H. Stevens.

Objected to by plaintiff's counsel for the reasons last above mentioned; which objection was overruled by the court.

A. I was employed at the time to make two surveys for location of placers, one on the south side of the California gulch and the other on the north side. The one on the north side——

Q. Whose employment was that?

A. William H. Stevens. The one on the north side of the gulch, embracing the territory lying west of the William Moyer placer, extending to the Iron mine, the Bull's Eye, and Lime, I surveyed for a patent. The plat was approved and application was made in the land office, and afterwards it was dropped, and the application was then made, I think, in the name of Stevens and Leiter.

120 Q. You are now talking of the William Moyer placer, are you not?

A. No, sir; the placer lying between the William Moyer and the Iron mine; and upon being forced to drop this application on the

north placer didn't go ahead with the south placer or what is now a portion of the Wells and Moyer in their own name.

Q. Well, what was it that forced you to drop the survey of the Wells and Moyer placer which was begun in the name of Mr. Stevens?

A. The survey wasn't dropped, but didn't go ahead with the application for patent.

Q. Why was that?

A Under instructions with Mr. Stevens.

Q. State whether you subsequently made any survey of that claim as it now is.

A. No, sir; I did not.

Q. State whether you at any time had any conversation with Mr. Stevens concerning the survey of that ground in the name of Wells and Moyer.

A. I think I had no conversation directly with Mr. Stevens in regard to it.

Q. State whether you ever had any at any time with Wells and Moyer in regard to it.

A. No, sir; I did not.

Q. State if you know who paid for the patent survey and application for the Wells and Moyer.

A. I don't know that.

Q. Who were your chainmen at the time you made this survey?

A. I don't remember.

Q. In making the original survey where the Wells and Moyer now is state how the lines of that survey conform with the lines of the survey as subsequently patented.

A. They conform nearly with the western boundaries of the Wells and Moyer placer as it is now.

Q. State whether it presented the same irregularity of boundary.

A. It did, sir.

Q. Why was that?

121 A. The surveying around lode claims, adjoining lode claims, a line of lode claims.

Q. And taking up the vacant ground?

A. The vacant ground; yes, sir.

Q. I believe you said Mr. Bates made the patent survey of that claim?

A. Yes, sir.

Q. State how nearly, if you know, the patent survey of the Wells and Moyer placer followed with the original survey.

A. I think it followed the identical lines of the western portion of the patent survey.

Q. Mr. Baldwin, do you know of a lode claim called the Summit?

A. Yes, sir.

Q. Where is that situated with reference to the Wells and Moyer?

A. It is situated within the exterior boundaries of the Wells and Moyer placer.

Q. Could you point out about where it is on that plat?

Objected to by plaintiff because it is a notorious fact that most of those claims are made without any discovery and are simply frauds on their face; which objection was overruled by the court.

A. The map of the Wells and Moyer is not extended sufficient to show the Summit lode.

Q. Was that lode there at the time or was that lode claim there at the time you made the survey?

A. Yes, sir.

Q. Was there any lode known to be there?

A. Yes, sir.

Q. Was any exception made of it in your survey?

A. No, sir.

Q. What kind of a lode was it or is it?

A. It is one of the contacts; it is on the contact there.

Q. The same contact as the others?

A. I think so.

Q. Mr. Baldwin, can you state what piece of ground upon that map is intended to be represented by that small yellow parallelogram?

A. No, sir; I don't know.

122 Q. State whether, in connection with your business as civil engineer, you have had occasion to survey or examine these lode claims of which you speak which form the boundaries of the Wells and Moyer or any of them.

A. Yes, sir. I have been under ground in most of them.

Q. State whether or not they contain any lode or vein deposits in place.

A. I think they do.

Q. What is the direction of those lodes or veins with reference to their trend or dip into the ground?

A. They dip in an easterly direction, outcropping along the line of the lodes.

Q. State whether or not their direction is towards and underneath the Wells and Moyer and the William Moyer or whether they are in other directions.

A. They are in the direction of the Wells and Moyer and the William Moyer placers.

Q. At the time you made this survey for Mr. Stevens state what, if anything, was said by him as to what his purpose or intention was in taking up this large tract of ground as placer.

Objected to by plaintiff because the witness has already stated he had no conversation with Mr. Stevens; which objection was overruled by the court.

A. At the time that I was employed to make those surveys Mr. Stevens told me for the purpose of keeping the people off from sinking shafts and striking this contact that he claimed to have the outcrop of.

Q. How much work had been done on that Summit lode at the time you made this survey, and how visible was the outcrop, if at all, upon the surface?

A. At the time I made the survey of the placer there was a discovery shaft in the neighborhood of fifteen to twenty feet
123 deep, showing the contact. The Summit lode was located by A. B. Wood, who afterwards sold to Stevens and Leiter.

Q. He was foreman of Mr. Stevens' property, was he not?

A. Yes, sir.

Q. Mr. Baldwin, what part of the Wells and Moyer placer claim at the time you made that survey had been used for purposes of placer mining?

A. A strip of ground along——

Objected to by plaintiff because it is immaterial after the issuing of the patent what the character of the ground was and irrelevant to the issues; which objection was overruled by the court.

A. There was a strip of ground along the eastern portion of the Wells and Moyer placer that was worked as a placer mine.

Q. Is that in California gulch?

A. In a branch of California gulch to the south.

Mr. SYMES: I want to make an objection, based on the objection in the Sierra Nevada case. In the case all the testimony regarding the character of the ground, whether placer or lode ground or what witnesses considered it, was ruled out.

The COURT: The objection is overruled, sir.

Q. About what proportion of the entire claim does that last part of which you spoke consist of?

A. It cannot be much over five or six per cent. of it.

Q. Where is the balance of the claim situated with reference to the mountain?

A. It is situated pretty well on the top of the mountain.

Q. Is the gulch at the point where these placer workings on the claim had previously been done—is it narrow there, or are the banks gradually sloping?

124 A. They are gradually sloping. The gulch itself is quite narrow.

Q. Do you know of a claim called the Oro La Plata?

A. Yes, sir.

Q. How long have you known that claim?

A. Since the spring of 1877.

Q. State where it is located with reference to the boundary lines of the Wells and Moyer.

A. It is in the northern portion of the Wells and Moyer placer. I think the Wells and Moyer runs around a portion of the Oro La Plata lode.

Q. So that it projects into the territory?

A. So that it projects into the territory.

Q. Did you at that time examine the workings of the Oro La Plata?

A. Yes, sir.

Q. What did they show with reference to any mineral deposit?

A. They showed a contact vein, well defined.

Q. Was this contact vein well defined perpendicular or more or less horizontal?

A. More or less horizontal.

Q. Give the names of the other claims either adjoining or projecting into the Wells and Moyer at that time and the boundaries of which you respected in making the survey.

A. The Stone, the Oro La Plata, the Dome, and there were one or two claims that were in the interior of the placer, but I don't remember whether I run around then or not—the H. D., the Nisi Prius, and the William Reddick; the Pinnacle was also used as one of the boundaries of the placer.

Q. I will ask you to look at that, Mr. Baldwin. State whether it represents approximately the properties and mines you have just spoken of on the Wells and Moyer placer boundaries (referring to plat).

A. Yes, sir; I think it does.

125 Q. State what the ground which was included into the Stevens and Leiter placer, that you made a survey of, running from the Iron mine down towards the present boundaries of the Moyer patented claim, consists of at present.

A. Well, a great many mines are on that ground at present.

Q. What kind of mines?

A. Lode mines.

Q. Producing mines?

A. Yes, sir.

Q. Have you ever examined any of them?

A. Yes, sir.

Q. What sort of a mineral deposit has been disclosed in them?

A. A contact deposit.

Q. A vein of what position in the earth?

A. A vein with a porphyry hanging wall and lime foot wall dipping in an easterly direction.

Q. State whether or not those lode claims of which you just spoke adjoin—whether any of them adjoin—the boundaries of the Moyer placer claim.

A. I think one of them does that I have in my mind now—the Ruby.

Q. Does that constitute one of the claims that you say you have examined?

A. Yes, sir.

Q. I will ask you to state, Mr. Baldwin, whether, from your examination of the different mines adjoining the Wells and Moyer placer claim at the time you made this survey for Mr. Stevens of that ground, there was known to exist any mineral deposit in place underneath the boundaries of the Wells and Moyer placer claim.

Objected to by plaintiff for reasons above stated.

A. Whether there had been discovered at that time within the boundaries of the placer?

Q. Yes, sir; or known to exist.

A. Outside of this Summit lode which I spoke of I don't think there were any developments to the contact.

Q. But with reference to the developments in the Oro La
126 Plata and these adjoining claims state whether or not—and the character of the walls, the porphyry above and limestone beneath, the character of the dip and so forth—there was or was not known to exist within its boundaries this or any deposit of mineral in place.

Objected to by the plaintiff because he asks not for a fact, but a geological supposition or theory as to what was supposed to be three to five hundred feet under ground for which a placer patent issued. He has already testified that the lode that existed had its outcrop outside of the placer and it belonged to whoever owned the locations upon which the outcrop existed; which objection was overruled by the court.

A. It was supposed to exist under the exterior bounds of the placer.

Q. State whether that conclusion was the conclusion of the community there in general or simply a few individuals.

A. I think it was pretty generally understood that that was the case.

Q. What placer development or workings or prospectings had been done upon the hillside outside of the gulch included in the lines of this survey at the time you made it?

A. There were none outside of the gulch at the time I made the survey.

Q. Do you know of any that have been made since?

A. No. sir.

Q. You used the expression "contact" once or twice, Mr. Baldwin. State to the jury what you mean by that in that connection. State what the formation of that vein is according to development.

127 A. According to development we find a body of, generally, iron containing quite a percentage of iron, more or less lime between the porphyry hanging wall and the lime foot wall, and it is generally called a contact or blanket vein. It has different names

Q. You speak of iron; state whether that is the gang of the mineral vein itself.

A. It is the gang of the mineral vein.

Q. What other metals does this vein carry?

A. It carries silver, gold some places, and lead.

Q. Now, I will ask you to state from the examination that you made of the claim in the vicinity of the William Moyer whether or not it was generally known or supposed that this same contact vein or any other vein extended under the boundaries of the Wells and Moyer at the time of the location.

A. It was supposed to extend under the boundaries.

Q. What portion of the Moyer placer claim was used for placer mining purposes previous to its location?

Objected to by plaintiff for reasons above given; which objection was overruled by the court.

A. I don't remember. There might have been a small proportion along the gulch.

Q. Which gulch?

A. California gulch.

Q. About what percentage of the whole?

A. Well, a very small percentage.

Q. What placer developments have been made since that time upon the Wells and Moyer beyond this small percentage of which you speak?

A. None that I am aware of.

Q. You spoke of a contact between two different formations there. I will ask you to state whether or not the great bulk of the
128 production of the Leadville mining district is not from the ore found lying between these two different formations.

A. Yes, sir; it is.

Cross-examination by Mr. SYMES:

Q. Mr. Baldwin, quite extensive placer mining was carried on up and down California gulch upon the ground included within the Wells and Moyer placer claim?

A. Yes, sir; a short distance each side of the center of the gulch.

Q. Is there not also a branch gulch of California known as Eureka gulch, which extends from somewhere near Oro City up some distance across the Wells and Moyer placer claim, where quite an extensive placer mine was developed, which might be called a branch gulch, or the upper portion of it, bar diggings, on the side of the gulch?

A. Yes, sir; it was on the eastern side of the Wells and Moyer placer.

Q. But within the boundaries of it—included within its bounds?

A. Yes, sir.

Q. Also, was there not quite extensive placer mining carried on for some time in Nugget gulch within the William Moyer placer, as it is called, through this blue lime, which represents the bottom of Nugget gulch connected with California gulch at this point; wasn't mining carried on there?

A. I believe not.

Q. Do you not know about that ditch *but* in by Berry and others to lead water out of California gulch, way above the Wells and Moyer placer, for the purpose of using it to mine in Nugget gulch, placer mining?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Is there not a ditch with water in it every season that covers the whole of the William Moyer placer claim?

A. There is a ditch at the north end of the William Moyer
129 placer, running from the Evans gulch, that leads to the Iron mine.

Q. And isn't the water that is carried in that ditch so high that it

will take it to any portion of the William Moyer placer claim for the purposes of mining?

A. I think it will on the north portion.

Q. You don't know anything about that old ditch used years ago?

A. I think that was the old ditch which is in California gulch.

Q. A branch of it?

A. Yes, sir.

Q. Are you familiar with the Mike and Starr mines?

A. No, sir.

Q. You haven't been in them?

A. I haven't been in them.

Q. You don't know anything about whether the workings extending east from the east boundary of the William Moyer are upon a vein dipping east?

A. Not from my own knowledge; no, sir.

Q. You don't know anything about that cross-fissure or break that cuts off the contact vein at or near the lime?

A. No, sir.

Q. You have said that it was generally supposed that this contact vein which was developed in the different shafts that you have mentioned, and other witnesses, in the Rock and Dome claims—I believe you said the Summit claim, the Oro La Plata, and others?

A. Yes, sir.

Q. Extended upon its dip underneath these placer claims?

A. Yes, sir.

Q. Particularly now let us confine it to the Wells and Moyer. You say that was the general supposition, you supposed?

A. Yes, sir.

Q. There were not enough elements to prove that fact at the time the survey and application was made for patent?

130 A. No, sir; outside of the Summit lode itself.

Q. It was supposed to exist at the extent of its dip underneath the Wells and Moyer placer claim, perhaps three to five hundred feet underneath the surface?

A. The dip had been shown by development a good distance under ground.

Q. Was it supposed to be that distance underneath the ground before the application for the placer patent?

A. Yes, sir; I think it was.

Q. Was this supposition, then, a mere what we might call geological theory or opinion, that this vein extended underneath that ground for half a mile or for a mile, and not a fact?

A. It was a theory based upon different developments that are there, emanating from William H. Stevens, principally.

Q. Mr. Stevens has always contended that this vein extended upon its dip under that whole country, and that it was one single vein?

A. Yes; I think that has been his theory.

Q. Mr. Stevens, and afterwards Stevens and Leiter, and the Iron Company owned lode claims located upon the top, outcrop, and apex

of this same vein which was supposed to extend on its dip under this ground?

A. Yes, sir.

Q. That outcrop and apex of quite a portion of the vein that would extent on its dip, if it does, under the Wells and Moyer placer, was actually developed and was to be seen in the mining claims known as the Rock and Dome lode mining claims owned by Stevens and Leiter and the Iron Company afterwards?

A. Yes, sir.

Q. And in the Oro La Plata?

A. Yes, sir.

Q. You say that it was a general supposition that this contact vein the outcrop and apex of which had been developed and
131 claimed to be owned throughout its entire depth by Sirs Stevens and Leiter and the Iron Company did extend underneath this ground?

A. Yes, sir.

Q. I will ask you whether or not you knew of those trials here in which the Iron Company and Stevens and Leiter, in this court, have sought to establish their legal right to follow this vein on under their lode claims and other ground, and that numerous witnesses have been brought here and testified that it was not a continuous vein—that testified in behalf of these gentlemen that it was not a continuous vein, but a series of detached deposits?

A. Well, I couldn't say positively.

Q. You have heard such testimony, have you not?

A. I have, in the early days, sir.

Q. Then you know it, for you have heard it?

A. Yes, sir.

Q. You were present at a trial in 1879?

The COURT: That will do, Mr. Symes; we are not trying those cases over again or ask- any questions about it.

Q. Is there not or have you not known that quite a large majority of the miners and mining men who have investigated, talked about, and discussed this subject in Leadville contended for years that that was not a continuous lode or a continuous vein, but that it was a series of detached deposits scattered through that country, and could not be called a lode or vein within the meaning of those terms in the statute?

A. Well, that is more of a point of law than anything else with me.

Q. Not at all. I am asking you what these people said about it, or miners.

A. You can hear an expression of opinion on both sides, a continuous vein and——

132 Q. Have you not heard or do you not know that quite a large majority of the mining men and miners of Leadville contended for the theory that it was not a continuous lode or vein, but simply a series of detached deposits of carbonate ore lying in

the limestone sometimes and sometimes on the contact at different positions?

A. Well, development has changed opinion there very considerably.

Q. In what respect?

A. The opinion in an early day was that it was a continuous deposit—that was the general opinion—but the development in places has changed somewhat their views.

Q. That shows it was not a continuous deposit?

A. Yes, sir; in some instances.

Q. Then do you say that this supposition which you have spoken of—that this contact vein extended under this placer ground back in 1877 and 1878, before the application for the placer patent—has proved to be erroneous, and actual developments have shown it is not a continuous vein, but that developments have shown a series of detached deposits of carbonate ore?

A. I think in some instances it is shown to be a continuous vein running under these placers, and in other instances it is not continuous.

Q. That is, that under some portions of the placer it may be a continuous vein and under some portions not?

A. Yes, sir.

Q. Mr. Baldwin, didn't quite a large number of gentlemen have the opinion and swear to that opinion that what was contended for to be a vein——

The COURT: That will do, sir. You can't ask anything about what gentlemen have testified to.

Q. Have you not heard a number of gentlemen express the opinion that that portion you might say of that so-called
133 vein which extended underneath the Lime and Smuggler, and hence under the placer, was not in place, but was nothing but slide and debris?

A. I think I have in that locality.

Q. That is a portion of the vein—so-called vein—which, upon its dip and extension, if it does extend persistently—upon its dip would lie under the William Boyer placer?

A. Yes, sir; under a portion of the William Boyer placer.

Q. Then is it not a fact, Mr. Baldwin, that when we reach the question of supposition or opinion or theory in that community upon there being a known lode or vein extending underneath this placer that the opinions are very various and confused and uncertain upon the subject, up, any way, to the time when the applications were made for these placer patents?

A. Well, developments that have been made since the application for these placer patents have changed those ideas considerably; but prior to that time, at the time these placers were located, there was a general idea that this vein dipped in a regular shape, with a regular dip under the ground and under the placer patents, and developments since have changed in some respects that opinion.

The COURT: In this case you have enough evidence to present every question that you wish to discuss in the Supreme Court, and I shall instruct against you. I don't think I shall hear any more evidence in reference to it.

By consent of counsel the court permitted the defendants to introduce the following additional testimony on their behalf:

134 FRED. G. BULKLEY, a witness called and sworn on the part of the defendants, testified as follows:

Direct examination by Mr. REED:

Q. Mr. Bulkley, did you make that map that is put up there?
A. I made this one on tracing paper.
Q. Does that correctly represent the location of those claims?
A. It does; yes, sir.
Q. Mr. Bulkley, now explain that map, please.
A. The small map shown here is a map which I made in 1883. It shows the boundaries and corners of the Wells and Moyer placer, those corners being indicated by numbers and the boundaries being indicated by heavier lines than the other lines drawn upon the map. There is also shown in connection with it, this placer, a number of lode claims adjoining and running into the placer. There is also shown the Kit Carson lode, the Brooklyn, and other lodes surveyed upon and in conflict with the placer. The Kit Carson is shown where I now point and indicated by a red line.
Q. Now, what do those several claims or several marks represent all over that portion of the placer?
A. They represent lode claims adjoining and running into the placer or located in direct conflict with the placer, lying parallel with the placer.
Q. Won't you just mention the names of some of those lodes that run into the placer?
A. Upon the east the Pennsylvania lode claim, which runs into the placer, and—I don't know whether the testimony is competent—I have seen the record which shows a deed to the owners. Here, south, I might say upon the east of this placer, are also other lode claims adjoining the placer which are not shown; among
135 others is the Belmont, Erin, the Leviathan, and other lode claims. So along the entire boundaries of that placer, or nearly so, is also the boundary of lode claims lying directly to the east of or contingent upon it. Upon the south is shown the Nisi Prius lode claim, located partly upon and partly outside the placer, and adjoining that on the north is a piece of ground located as the Leadville claim. I have marked it Pease' ground, because it was deeded under that name.
Q. Now, what are the other claims that are shown there?
A. Upon the direct west of the Wells and Moyer placer are claims not shown. The claims which are shown are the Dome, the Rock, the 76, H. D., Reddick, and Daisy, and Stone, all of which are owned by the Iron Silver Mining Company. The Daisy extends upon the

placer and so surveyed it after the placer was surveyed for patent. Other claims shown are the Gilt Edge, Oro La Plata, and the Pinnacle, owned by different individuals or companies.

Q. Are you familiar with the general geological formation of the ground covered by the Wells and Moyer and the Moyer placer?

A. Yes, sir.

Q. State whether it is the same with reference to this contact vein which extends through it.

A. Developments have shown that contact vein extends into it, and presumably through it.

Objected to by plaintiff as immaterial and irrelevant, the character of the formation, vein, or workings being irrelevant after patent; which objection was overruled by the court.

Q. Do you know the Summit lode? Did you see the location?

A. I never have seen the shaft nor the stakes upon the ground, but I have seen that the records in the recorder's office——

136 Q. Do you know where the outcrop of it was?

A. My recollection of the summit claim is that it was located somewhere in this neighborhood upon the placer, the Pinnacle and Summit adjoining each other.

Q. What was the general dip of this vein that you say is found by development to run into the Moyer and the Wells and Moyer placer, and what is the direction of its dip?

A. The direction of the dip and the degree of the dip varies slightly, but the general direction is east, and the degree of the dip is anywhere from six to fifteen degrees. That would be at an angle something like that (indicating).

Q. From the perpendicular or horizontal?

A. From the horizontal.

Cross-examination by Mr. SYMES:

Q. How many times have you testified as a witness in cases regarding this contact vein in this hill, and what it was with reference to its continuity, its having an apex, and portions of it being in place and out of place?

A. You speak of a contact vein in that hill. I presume I have testified twenty-five or fifty times.

Q. Have you testified in any case involving the title to a portion of that vein, where they claimed the right to follow it into the hill by virtue of having the apex, that it was not continuous and that it was not in place?

A. I have testified that portions of that vein were not in place; I have testified that portions of that vein were not continuous; I have testified that portions of the vein were continuous, and that result has been proved by demonstration; it has been demonstrated by development. Different portions of the vein vary very considerably.

Q. That is just the point I desire to ask you about. Is it
137 not a fact that, in your opinion as a mining and civil engineer testifying, that you cannot apply any general rule to that vein

through that country with reference to its contiguity or its being in place or out of place?

A. You can apply a general rule; yes, sir.

Q. If you apply a general rule, what will that rule be, according to your opinion and your former testimony in numerous cases?

A. I think that I am entitled to explain perhaps one thing with reference to portions of the vein being out of place. My testimony has always been given where this vein, or what is called the vein, came very near the surface where the ground had been broken and disturbed. I have found the vein material mixed with rock, fragments of rock that is not found any place in that neighborhood, that comes from a distance of five or six miles, and when I found vein material and such rock as that mixed I concluded that was out of place. That was near the surface where it had been subjected to great disturbing natural influences. Now, when the mountain is entered——

The COURT: That will do. If you have got any question to ask about a fact, that is very well. I will hear no more about what testimony has been given in other cases. I will hear no theories about it being in place or out of place.

Q. Is it not your opinion that a portion of the vein extending under the William Moyer placer is out of place from the point where it outcrops on the hill for over two hundred feet under the mountains, as far as at one time developed?

A. In one locality, or perhaps more, yes.

Q. You said that presumably this contact vein extended
138 under the whole of these placer claims?

A. Yes, sir.

Q. Presumably? Why do you presume that from opinions that you advance regarding the fact—that it is not always continuous, but sometimes it is?

A. Because workings have followed it continuously into the boundaries of the Wells and Moyer placer without any great change in the characteristic of the vein, following it in the shape of drifts, while further over, beyond the extremity of the drifts, shafts have been sunk which at a level with those drifts have reached ore and vein having the same characteristics.

Q. And from that you think it is a continuous vein at these points that you now mention?

A. Yes, sir.

Q. Whereabouts and in what lode claims do you find the top, apex, and outcrop of the portions of the vein which you now say you think is continuous?

A. I am unable to say just where the top, outcrop, and apex would be. It is exposed for a long distance laterally—two miles.

Q. Do you not find a large portion of the top, outcrop, and apex of the vein that you say extends under the Wells and Moyer placer in the Rock and Dome and Stone mining claims?

A. Yes, sir; I believe that to be the case.

Q. Those claims belong to the plaintiff company?

A. Yes, sir.

Q. Do you not find the outcrop, top, and apex of a large portion of that contact vein which extends underneath the William Moyer placer in the Iron, Iron Hat, Bull's Eye, and other claims along the west slope of Iron hill?

A. I am not prepared to say that you do.

Q. It is outside of the placer?

A. Yes, sir.

Q. Wherever it is?

A. I should judge that to be the case.

139 Q. It is covered by some lode claim—the top, outcrop, and apex is?

A. Very likely; yes, sir.

Q. Mr. Bulkley, with reference to this seam that you have described and say you are not prepared to say whether it is a vein or not, is that any part or portion of this contact vein that extends through that country that you have been testifying about?

A. Not properly; no, sir.

Redirect examination by Mr. REED:

Q. Has it any connection, apparently, with the vein?

A. Almost positively; yes, sir.

The defendants, by their counsel, here offered in evidence the map referred to by the witness Bulkley, which was admitted without objection, and is as follows:

(Here follow diagrams marked pp. 140 & 141.)

142 The defendants, by their counsel, next offered in evidence the location certificate of the Kit Carson lode claim.

Objected to by plaintiff's counsel because the same was made after the issuance of the Wells and Moyer placer patent; which objection was overruled by the court.

Said location certificate is in the words and figures contained in plaintiff's Exhibit "F," to which reference is hereby made.

And thereupon the defendants rested their case.

The foregoing was all the evidence introduced on the trial of this cause.

Mr. SYMES: If the court please, we desire to dismiss as to the damages in this case.

And thereupon the court charged and instructed the jury as follows, to wit:

"Under the opinion rendered by Judge McCrary in this case, it appears that the plaintiff is entitled to recover, the defendants' location not having been made until after the patent was issued, and we will enter your verdict for the plaintiff in such form as counsel may present."

To which charge and instruction of the court the defendants, by their counsel, then and there duly excepted.

And thereupon the jury returned a verdict for the plaintiff.

And thereupon the defendants filed their motion for a new trial; which said motion is in words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
143 *District of Colorado,* }

In the Circuit Court of the Eighth Judicial Circuit in and for said District.

THE IRON SILVER MINING COMPANY }
vs. }
JOHN L. SULLIVAN *et al.* }

The defendants, by Patterson and Thomas, James B. Belford, and Clinton Reed, their attorneys, now come and move the court to set aside the verdict of the jury in the above-entitled cause and to grant them a new trial of the issues herein joined, because—

First. The verdict is contrary to the evidence.

Second. The verdict is contrary to law.

Third. The court erred in instructing the jury to find against the defendants and to bring in a verdict for the plaintiff.

Fourth. The court erred in excluding proper evidence offered by the defendants for the consideration of the jury and for other good and sufficient reasons.

By PATTERSON AND THOMAS,
J. B. BELFORD,
CLINTON REED,
Attorneys for Defendants.

But the court overruled said motion and gave a judgment on the verdict of the jury for the plaintiff against the defendants; to
144 which ruling of the court in so overruling said motion giving judgment as aforesaid the defendants, by their counsel, then and there duly excepted.

And, forasmuch as the matters and things above set forth do not fully appear of record, the said defendants tender this their bill of exceptions and pray that the same may be signed and sealed by the judge of this court, pursuant to the statute in such cases made and provided, which is done accordingly this 19th day of February, A. D. 1886, at the city of Denver, in said district.

(S'g'd) MOSES HALLETT, [SEAL.]
Dist. Judge.

(Endorsed:) 1138. U. S. circuit court. Iron Silver M'g Co. *vs.* J. L. Sullivan *et al.* Defendants' bill of exceptions. Filed Feb. 19, 1886. (S'g'd) Edward F. Bishop, clerk.

And afterwards and on, to wit, the 10th day of August, A. D. 1886, came the said defendants, by Messrs. Patterson & Thomas, their attorneys, and filed in said court and in said cause their bond and

sued out of said court a writ of error to the Supreme Court of the United States; and the said bond is in words and figures as follows, to wit:

Bond.

145 Bond in appeal or error, United States court, Colorado.

THE UNITED STATES OF AMERICA,

[Vignette.]

District of Colorado.

Know all men by these presents that we, John L. Sullivan, as principal, and William A. Christian and E. D. Curron, as sureties, are held and firmly bound unto the Iron Silver Mining Company in the full and just sum of five hundred dollars, to be paid to the said The Iron Silver Mining Company; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22d day of July, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at the October term, A. D. 1885, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between John L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. McLaughlin, and P. J. McNulty, as defendants, and The Iron Silver Mining Company, as plaintiff, judgment was rendered against the said John L. Sullivan *et al.*, and they having obtained a writ of error to reverse the judgment of said court, and a citation directed to the said The Iron Silver Mining Company, citing and admonishing it to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the second Monday of October next:

Now, the condition of the above obligation is such that if the said John L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. McLaughlin, and P. J. McNulty shall prosecute said writ to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

[L. S.]	(S'g'd)	JOHN L. SULLIVAN.
[L. S.]	"	WM. A. CHRISTIAN.
[L. S.]	"	E. D. CURRON.

Approved.

(S'g'd) MOSES HALLETT, *Judge.*

146 Endorsed: Gen. No. 1138. Circuit court of the United States, district of Colorado. The Iron Silver Mining Company *vs.* John L. Sullivan *et al.* Bond. $500.00. Filed this 10th day of Aug., A. D. 1886. (S'g'd) Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk.

Justification.

STATE OF COLORADO, } ss:
County of Lake, }

Wm. A. Christian and E. D. Curran, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real property the sum below set opposite his name—that is to say, as to Wm. A. Christian, two hundred and fifty dollars; as to E. D. Curran, two hundred and fifty dollars—over and above all his just debts and liabilities and in property subject to levy and sale upon execution.

(S'g'd) WM. A. CHRISTIAN.
" E. D. CURRAN.

Subscribed and sworn to before me, at Leadville, this 22d day of July, A. D. 1886.

(S'g'd) J. H. PLAYTER,
Clerk Dist. C't Lake County, Colorado.

147 And the said writ of error, with the return of the clerk thereto, is next hereto attached, to wit:

Writ of Error.

148 Writ of error to circuit court U. S., district of Colorado.

THE UNITED STATES OF AMERICA.

[Vignette.]

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

The President of the United States to the judges of the circuit court of the United States for the district of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, between the Iron Silver Mining Company and John L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, & P. J. McNulty, a manifest error hath happened, to the great damage of the said John L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, & P. J. McNulty, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2d Monday of October

next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 10th day of August, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the 111th year.

Seal United States Circuit Court, District of Colorado.

EDWARD F. BISHOP, *Clerk.*

Allowed by—

MOSES HALLETT, *Judge.*

148½ [Endorsed:] Gen. No. 1138. Circuit court of the United States. The Iron Silver Mining Co., plaintiff in error, *vs.* John L. Sullivan *et al.* Writ of error to — court U. S., district of Colorado. Filed in circuit court of the U. S. this 10th day of August, A. D. 1886. Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk. Patterson & Thomas, attorneys for plaintiffs in error.

Return.

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In obedience to the command of the within writ I herewith transmit to the honorable Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Witness my hand and the seal of said circuit court, at Denver, in said district, this 16th day of August, A. D. 1886.

Seal United States Circuit Court, District of Colorado.

EDWARD F. BISHOP, *Clerk.*

149 And thereupon a citation was issued, duly served upon the said plaintiffs, and returned and filed in said court and in said cause.

And the said citation is next hereto attached, to wit:

Citation.

150 Copy.

Citation, U. S. circuit court.

THE UNITED STATES OF AMERICA,

[Vignette.]

District of Colorado.

The United States of America to the Iron Silver Mining Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein John L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, P. J. McNulty are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 10th day of August, in the year of our Lord one thousand eight hundred and eigthy-six.

MOSES HALLETT, *Judge.*

150½ [Endorsed:] Gen. No. 1138. Circuit court of the United States, district of Colorado. John L. Sullivan *et al.*, plaintiffs in error, *vs.* The Iron Silver Mining Company, defendant in error. Citation. Filed in circuit court of the U. S. this 13th day of August, A. D. 1886. Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk. Patterson & Thomas, attorneys for plaintiffs in error.

Proof of Service.

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

On this — day of ——, A. D. 18—, personally appeared —— —— before me, the subscriber, a clerk of the — court of the United States for the district of Colorado, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed before me this — day of ——, A. D. 18—.

—— ——, *Clerk,*

By —— ——, *Deputy Clerk.*

I hereby acknowledge service of the within notice by receipt of a true copy thereof, at the city of Leadville, county of Lake, and State of Colorado, on the 11th day of August, A. D. 1886, at the hour of 2.30 p. m. of said day.

FRANK W. OWERS,
Att'y for Defendants.

151 And afterwards and on, to wit, the 24th day of September, A. D. 1886, came again the said plaintiffs, by their attorneys aforesaid, and filed in said court and in said cause their assignment of errors.

And the said assignment of errors is in words and figures as follows, to wit:

Assignment of Errors.

152 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States in and for said District.

JNO. L. SULLIVAN *et al.*, Pl'ffs in Error, }
vs.
THE IRON SILVER MINING COMPANY, Def'ts in Error. }

The said plaintiffs in error and defendants to the original suit now come and say that in the record and proceedings in said cause there is manifest error, in this, to wit:

First. The circuit court erred in admitting the certificate of S. J. Hanna, register of the land office of the United States at Leadville, over the objection of plaintiffs in error, as found at p. 72 of the record or transcript.

Second. Said court erred in instructing the jury as follows: "Under the opinion rendered by Judge McCrary in this case it appears that the plaintiff is entitled to recover, the defendants' location not having been made until after the patent was issued, and we will enter your verdict for the plaintiff in such form as counsel may present."

Third. The said court erred in overruling the motion for new trial filed by the plaintiffs in error and in giving judgment upon the verdict.

Wherefore the plaintiffs in error pray that the said judgment may be wholly reversed, set aside, annulled, and for naught held, and that they may be in all things restored to their rights and
153 position as though said judgment had never been rendered.

And in duty bound they will ever pray, etc.

PATTERSON & THOMAS,
Att'ys for Pl'ffs in Error.

(Endorsed:) 1138. U. S. circuit court, district of Colorado. Jno. L. Sullivan *et al.*, pl'ffs in error, *vs.* The Iron Silver Mining Co., def'ts in error. Assignment of error. Filed Sep. 24, 1886. (S'g'd) Edward F. Bishop, clerk. Patterson & Thomas, atty's for pl'ffs in error.

154 UNITED STATES OF AMERICA, }
District of Colorado, } ss:

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore had and entered of record in said court and in a certain cause lately in said court pending, wherein The Iron Silver Mining Company was plaintiff and John L. Sullivan *et al.* were defendants, as fully and completely as the same still remain on file and of record in my office.

Seal United States Circuit Court, District of Colorado.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 24th day of September, A. D. 1886.

EDWARD F. BISHOP, *Clerk,*
By F. W. TUPPER, *Deputy Clerk.*

Clerk's Fees.

Preparing transcript, 550 fol's, at 10c.	55 00
" 3 maps, at 2.00	6 00
Certificate and seal	35
Paid by plaintiffs in error.	$61 35

Endorsed on cover: Colorado C. C. U. S. No. 151. John L. Sullivan, John Ryan, Phillip Harrington, Timothy Carroll, Richard Foley, K. C. Fisher, M. J. Stewart, Timothy Santry, C. J. O'Laughlin, and P. J. McNulty, plaintiffs in error, *vs.* The Iron Silver Mining Company. Filed October 11, 1886.

IN

The Supreme Court

OF THE

United States.

OCTOBER TERM, 1889.

JOHN L. SULLIVAN *et al.*,
Plaintiffs in Error,
vs.
THE IRON SILVER MINING CO.,
Defendants in Error.

Error to the Circuit Court of the United States for the District of Colorado.

Brief and Argument of Plaintiffs in Error.

T. M. PATTERSON,
C. S. THOMAS,
Attorneys for Plaintiffs in Error.

C. J. KELLY, Law Printer, Denver.

IN

The Supreme Court

OF THE

United States.

OCTOBER TERM, 1889.

JOHN L. SULLIVAN *et al.*,
Plaintiffs in Error,

vs.

THE IRON SILVER MINING CO.,
Defendants in Error.

Error to the Circuit Court of the United States for the District of Colorado.

Brief and Argument of Plaintiffs in Error.

STATEMENT.

For the second time this action is before the Court of last resort, and for the second time we complain practically of the commission of the same error by the Court below.

From the reported opinion in 109 U. S., 550, it appears that the action being one of ejectment, the defendants made answer that at the time of the location of a certain placer claim, described in the complaint, called the "Wells & Moyer,"

there was within its boundaries a known lode, ledge or deposit, to obtain which the said placer claim was located and entered. It was also alleged that the defendants had located the "Kit Carson" lode mining claim within the boundaries of said placer for the purpose of securing 300 feet by 1,500 feet of said lode; and the pretended ouster of the plaintiff consisted in the marking, recording and enjoyment of said location by the defendants. To that answer, it was demurred that such location could not prevail against the placer patent, inasmuch as it was not made, staked and recorded prior to the entry of said placer. The demurrer was submitted to his Honor, Circuit Judge McCrary, who sustained it in an opinion reported in 5 McCrary, 274, S. C. 16, F. R. 829, upon which judgment was rendered, and which judgment was reversed on error.

We construed the opinion of this Court at the time of its rendition, as meaning in effect that if A located a placer claim and obtained a patent for it, knowing that it contained a ledge, lode or deposit for which no separate application for patent was made, his act constituted conclusively a declaration that he made no claim to such lode or vein.

The construction given to it by the Circuit Court of the United States for the District of Colorado seems to have been that this Court simply decided, as a matter of practice, that a plea setting up such a condition of things, in the language of the statutes of the United States, was sufficient, and a demurrer thereto should have been overruled.

The case came back for trial, upon which a replication to the answer was filed by the defendant in error; in which reply, among other things, it was alleged that the plaintiffs in error had not, prior to the issuing of the placer patent, discovered, located, recorded or initiated within the exterior

boundaries of the placer premises any lode mining claim. (See Fol. 47 of the abstract of record).

A trial was had in which judgment was entered *pro forma* for the defendant in error, after which the costs were paid and a new trial granted under the statute.

The case coming up for trial a second time, evidence was introduced by the defendants in error establishing its title by patent and mesne conveyances from the patentees to itself, together with location certificate of the "Kit Carson" lode, showing its location to be subsequent to said patent.

Plaintiffs in error thereupon introduced evidence tending to show that at the time of the location of the Wells and Moyer placer a lode, ledge, vein or deposit of mineral or rock-in-place was known to exist to the locators thereof, and that a location was made by Wells and Moyer in behalf of and for William H. Stevens and Levi Z. Leither, who advanced the money and bore all the expenses attendant upon such location. It was shown that the claim was bounded by lode mining claims located on said vein, many of which extended far into the interior of said Wells and Moyer premises, and many of which were owned by the grantors of the defendant in error. It was also shown that the same vein outcropped in the Oro La Platta, Rock, Stone, Dome, Bull's Eye, and other claims, which appear generally upon the plat found at page 82 of the transcript; and that the Kit Carson lode claim had been located by the plaintiffs in error upon that vein.

When the plaintiffs in error rested, the defendant in error dismissed its complaint for damages; whereupon the Court took the case from the jury, refused to permit it to pass upon any question of fact, and gave it the following instruction:

"Under the opinion rendered by Judge McCrary in this case, it appears that the plaintiff is entitled to recover, the defendant's location not having been made until after the patent was issued, and we will enter your verdict for the plaintiff in such form as counsel may present." (Fol. 142.)

The plaintiff's in error excepted to the charge and to the instruction of the Court requiring a verdict for the defendant in error.

Motion for a new trial was made and overruled, whereupon the case was brought to this Court on writ of error.

ASSIGNMENT OF ERRORS.

The errors assigned are as follows:

I.

That the Court below erred in admitting the certificate of S. J. Hanna, Register of the Land Office of the United States at Leadville, over the objection of the plaintiffs in error as found at folio seventy-two.

II.

Error in instructing the jury as hereinbefore quoted.

III.

Error in overruling the motion for a new trial.

ARGUMENT

Whatever may have been the impression of the Court below as to the character of the testimony offered in support of the allegations of the answer, it is certain that the plaintiffs in error were entitled to a verdict of the jury upon such testimony.

The issues framed had been made in strict accordance with the previous instructions of this Court, and the main proposition to be determined from the testimony was, *whether at the time of the entry or application of the Wells and Moyer placer for patent, there was within its boundaries*

a known ledge, lode, vein or deposit; whether such knowledge extended to the patentees or beneficiaries of said claim, and whether plaintiffs in error had located, or had a right to locate, the same.

In the arguments which we presented to this Honorable Court in the case of

> The Iron Silver Mining Company v. Reynolds, and Reynolds v. The Iron Silver Mining Company, respectively, reported in 116 U. S., 687; 124 U. S., 374.

we endeavored, among other things, to demonstrate the fallacy underlying the decision of Judge McCrary, heretofore quoted. The decisions of this Court in the above case, under the circumstances mentioned, condemned and reversed the decision of Judge McCrary, thereby stamping as erroneous the instruction given by the Court in this case.

The construction to be placed on the words "known to exist;" the extent to which the knowledge of the existence of a vein within the boundaries of a placer claim should be brought home to patentee; the extent to which general knowledge of the existence of such vein might suffice to exclude it from the operation of the granting clause of the placer patent; the rights of locators of lode claims subsequent to a placer patent; all these things received the most copious and exhaustive discussion at the hearing of the two cases mentioned, and there is little which we could add to the force of the reasoning there used.

The case of Noyes v. Mantle, 127 U. S., 348, has determined that where an application is made for patent to a placer claim within the boundaries of which a lode claim has been located and staked, knowledge of the existence of the lode so claimed and staked will be conclusively presumed as against the applicant for the placer patent.

This case has gone further, and has for all time, we trust, determined the before then seriously controverted question as to whether Section 2333 of the Revised Statutes was intended *inter alia* to apply to lodes or veins within the boun laries of the placer claim, but not located by other persons previous to the application for the patent therefor. The decision is, that the section referred to was intended to exclude from placer patents all lodes or veins known to exist within their boundaries at the date of application, unless expressly included therein. The language of the Court is as follows:

"The section could have no application to lodes or veins within the boundaries of a placer claim which have been previously located under the laws of the United States and are in possession of the locators or their assigns, for, as already stated, such location when perfected under the law, is the property of the locators, or parties to whom the locators have conveyed their interests."

In other words, the decision is, that the opinion of Judge McCrary that the section applied only to lodes or veins within the boundaries of a placer claim which had been previously located is entirely erroneous; and that decision is as completely overruled as though the opinion in Noyes v. Mantle was made directly in the case at bar when it was previously before this tribunal.

The Court below in the case at bar therefore clearly committed error when it instructed the jury to return a verdict against the plaintiffs in error solely because under the decision of Judge McCrary, it appearing that the plaintiffs in error had not located their claim prior to the application of the Wells and Moyer placer for patent, they could not recover. If the trial Court had instructed the jury that under the testimony the defendant in error was entitled to a verdict and had stopped with such an assertion; its position

may or may not have been beyond successful criticism; having, however, predicated its instruction entirely upon the decision which has been both expressly and impliedly reversed by this Court, it seems to us that argument in behalf of our right to a reversal of the judgment is superfluous.

But we contend that the decision of this Court in Sullivan v. Iron Silver Company, 109 U. S., was in effect a reversal of Judge McCrary, so that the Court below in giving the instruction, had at that time the opinion of this Court to guide it, so that in giving the instruction complained of it either overlooked or else gave that opinion a construction which seems to us was not warranted by the language used.

If by pleading the language of Section 2,333, in bar of a complaint like the one in this case, a good defense was set up, then certainly testimony to establish such defense would form a complete bar to the action of undisputed, or if, in the opinion of the jury, a case was made out; hence the action of the Court below in recognizing our right to plead a defense, but denying our right to have the jury pass upon the testimony offered to support it, necessarily deprived the plaintiffs in error of all benefit which they had obtained by their original appeal. For the Court below did not assume that they had failed to prove the defense; on the contrary it determined that under Judge McCrary's view of the law it was immaterial whether we had or had not done so.

We submit, therefore, regardless of the question of the extent, character or quality of the testimony submitted, that the judgment of the Court below should be reversed, and the case remanded for further proceedings.

In addition to the position above assumed, our contention is that the Court below had no right to take the

case from the jury. Questions of fact presented for the consideration of that tribunal had been presented by the issues and testimony *pro* and *con* had been submitted for its consideration. The province of the Court does not extend so far as to justify it in a case and under circumstances like this in interfering and taking the same entirely from the consideration of the jury after the close of all the testimony. Independent, therefore, of the soundness or unsoundness of the McCrary decision, error was committed by such action. If there is any evidence tending to prove the issue on the part of either side, it is error to withdraw the case from the jury.

U. S. vs. Tillottson, 12 Wheat., 180.
Hickman vs. Jones, 9 Wall., 197.
Manchester vs. Ericsson, 105 U. S., 347.
Klein vs. Russell, 19 Wall., 433.
Moulor vs. Ins. Co., 101 U. S., 708.
Ins. Co. vs. Doster, 106 U. S., 30.
Ins. Co. vs. Lathrop, 111 U. S., 612.

All of which is respectfully submitted.

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Supreme Court U.S.
FILED.
MAR 19 1890

In the Supreme Court

Of the United States.

OCTOBER TERM, A. D. 1889.

JOHN L. SULLIVAN ET AL,
Plaintiffs an Error,

vs.

THE IRON SILVER MINING CO.,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

There was no testimony which would have justified the submission of the case to the jury or upon which a verdict for the defendants below could have been sustained. Our witnesses were examined on their part. Leonhardy pages 53 to 60, the defendant, Sullivan, pages 60 to 68; Baldwin, pages 68 to 79; and Bulkley, page 79 to 82. Sullivan's testimony, to a person having the slightest knowledge of geological formations in and about Leadville, is certainly most extraordinary, but taking all that he says as literally true, it has no tendency to establish a defense to the action. The perpendicular vein the top or apex of which he discovered in his shaft, nine feet below the surface, in 1883, four years after the patenting of the placer, was wholly unknown until he made such discovery. Assuming its existence as a vein